

## **EXHIBIT 21**

## David Klos - October 27, 2021

<p style="text-align: right;">1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --o0o--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, )</p> <p>7 L.P., )</p> <p>8 )</p> <p>9 Plaintiff, )</p> <p>10 )</p> <p>11 vs. ) No. 21-03004-sgj</p> <p>12 )</p> <p>13 HIGHLAND CAPITAL MANAGEMENT FUND )</p> <p>14 ADVISORS, L.P., )</p> <p>15 )</p> <p>16 Defendants. )</p> <p>17</p> <hr/> <p>18 DEPOSITION OF</p> <p>19 DAVID KLOS</p> <p>20 October 27, 2021</p> <p>21</p> <hr/> <p>22 DEPOSITION OF DAVID KLOS, produced as a</p> <p>23 witness, duly sworn by me via videoconference at the</p> <p>24 instance of the DEFENDANTS, was taken in the</p> <p>25 above-styled and numbered cause on October 27, 2021,</p> <p>from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS,</p> <p>CSR, RPR, in and for the State of Texas, reported by</p> <p>computerized machine shorthand, at 500 North Akard</p> <p>Street, 38th Floor, Dallas, Texas.</p>	<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4 Examination by MR. RUKAVINA 4</p> <p>5 Examination by MR. AIGEN 95</p> <p>6 Examination by MR. MORRIS 109</p> <p>7 Further Examination by MR. RUKAVINA 127</p> <p>8</p> <p>9</p> <p>10 (No exhibits marked.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF &amp; HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared via</p> <p>6 videoconference as counsel on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL &amp; JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared via</p> <p>13 videoconference as counsel on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 DAVID KLOS,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. RUKAVINA) Sir, state your name for</p> <p>5 the record, please.</p> <p>6 A. David Klos.</p> <p>7 Q. K-l-o-s?</p> <p>8 A. K-l-o-s.</p> <p>9 Q. What's your date of birth?</p> <p>10 A. May 6, 1982.</p> <p>11 Q. And where do you live?</p> <p>12 A. I live in Dallas.</p> <p>13 Q. What's your educational background?</p> <p>14 A. Undergraduate and graduate degrees. I went</p> <p>15 to undergrad at Boston College, graduate school at SMU,</p> <p>16 with a degree in, Master's of Science in accounting and</p> <p>17 MBA from SMU.</p> <p>18 Q. Do you hold any professional licenses?</p> <p>19 A. CPA in the state of Texas and, I don't know</p> <p>20 if it's technically a license, but Series 27 from</p> <p>21 FINRA.</p> <p>22 Q. And when did you get your CPA license?</p> <p>23 A. I don't recall specifically, but it would</p> <p>24 have been probably in the '08, '09 time frame.</p> <p>25 Q. Is it current?</p>

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<p style="text-align: right;">5</p> <p>1 A. As far as I know.</p> <p>2 Q. Have you ever been disciplined or threatened</p> <p>3 with disciplinary proceedings?</p> <p>4 A. No.</p> <p>5 Q. And your relevant work experience, please,</p> <p>6 starting with college and afterwards?</p> <p>7 A. Sure. Out of grad school I started working</p> <p>8 at Deloitte in Boston. I worked at Deloitte for</p> <p>9 approximately three and a half years, between the</p> <p>10 Boston office and the Dallas office.</p> <p>11 And then I began working at Highland Capital</p> <p>12 Management in March of 2009 and I've been at Highland</p> <p>13 since then.</p> <p>14 Q. And when you joined Highland in March of</p> <p>15 2009, what was your title or your role at that time?</p> <p>16 A. My title, if I remember correctly, was</p> <p>17 valuation senior analyst. I'm not certain if that was</p> <p>18 exactly it, but it was something along those lines.</p> <p>19 Q. Was it in the valuation group?</p> <p>20 A. Yes.</p> <p>21 Q. And then give me your -- today you're the CFO</p> <p>22 of Highland; correct?</p> <p>23 A. Correct.</p> <p>24 Q. So give me the progression from valuation</p> <p>25 analyst to CFO with, to the best of your recollection,</p>	<p style="text-align: right;">7</p> <p>1 There were a few title changes in between</p> <p>2 there. I think at one point I was manager, at one</p> <p>3 point I was senior manager, at one point I was</p> <p>4 assistant controller and at one point I was controller.</p> <p>5 I can't remember the exact times of all of</p> <p>6 those break points.</p> <p>7 Q. Let me pause you. When you were assistant</p> <p>8 controller, who was the controller?</p> <p>9 A. There was quite a bit of time where I was</p> <p>10 assistant controller and we didn't have a controller.</p> <p>11 I couldn't tell you the exact time frame, but there was</p> <p>12 definitely an extended time frame.</p> <p>13 And then in April of 2020, our existing chief</p> <p>14 accounting officer left and I assumed his</p> <p>15 responsibilities at that time.</p> <p>16 Q. Let me pause you. That's a new term for me.</p> <p>17 Chief accounting officer?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Who was that person?</p> <p>20 A. The person that left?</p> <p>21 Q. The person that was the chief accounting</p> <p>22 officer until April 2020.</p> <p>23 A. Cliff Stoops.</p> <p>24 Q. And do you have any idea or knowledge whether</p> <p>25 at Highland that was like an officer-level position?</p>
<p style="text-align: right;">6</p> <p>1 the approximate year that you were promoted, et cetera?</p> <p>2 A. Sure. I was in the valuation role from</p> <p>3 basically March of 2009 to end of 2009.</p> <p>4 I was then brought over to what we call the</p> <p>5 corporate accounting team, so doing the accounting for</p> <p>6 Highland Capital Management, LP and of the other</p> <p>7 advisor-type entities, where I was primarily focused on</p> <p>8 budgeting and forecasting, credit facility compliance.</p> <p>9 That took from roughly 2010 until I think</p> <p>10 middle of 2011, at which point I was moved over to the</p> <p>11 fund accounting group, so doing hedge fund accounting,</p> <p>12 which was a short role, really, for probably three or</p> <p>13 four months.</p> <p>14 At which point I was brought back to the</p> <p>15 corporate team and also put in charge of the valuation</p> <p>16 group. I held that role in some way, shape, or form</p> <p>17 more or less continuously for the next several years,</p> <p>18 although certainly my role evolved and changed.</p> <p>19 But in terms of the groups that I had</p> <p>20 oversight over, those were the groups. Like I said, my</p> <p>21 role definitely evolved over time from 2011.</p> <p>22 Q. So by 2017 what was your title?</p> <p>23 A. So, yeah, by that time, I was, I believe,</p> <p>24 controller. I might have still been assistant</p> <p>25 controller.</p>	<p style="text-align: right;">8</p> <p>1 A. It was not. It was more of a term of art, I</p> <p>2 would describe it. So it -- so, yeah --</p> <p>3 Q. To the best of your recollection, when did</p> <p>4 you become the controller at Highland Capital</p> <p>5 Management, LP?</p> <p>6 A. I couldn't pin down a specific date. Like I</p> <p>7 said, the responsibilities were very similar. I would</p> <p>8 guess the change from assistant controller to</p> <p>9 controller was probably in the, most likely in the '16,</p> <p>10 '17, maybe '18 time frame.</p> <p>11 Q. Can we agree that as of May 1, 2019, you were</p> <p>12 the controller at Highland?</p> <p>13 A. Yes.</p> <p>14 Q. So let's focus on that time frame, May 2019,</p> <p>15 and you're the controller. Who do you report to at</p> <p>16 Highland?</p> <p>17 A. Frank Waterhouse.</p> <p>18 Q. The CFO?</p> <p>19 A. Correct.</p> <p>20 Q. No one in between you and him?</p> <p>21 A. Correct.</p> <p>22 Q. So what -- explain to me the role between the</p> <p>23 chief accounting officer and the chief financial</p> <p>24 officer in that time frame, '19, '20?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">9</p> <p>1 question.</p> <p>2 THE WITNESS: Very little. Like I said,</p> <p>3 chief accounting officer was more of a term of art.</p> <p>4 What that role actually had oversight of was our retail</p> <p>5 fund accounting, institutional fund accounting,</p> <p>6 operations, so loan settlement and treasury.</p> <p>7 And probably another department or two that</p> <p>8 I'm forgetting, but it did not have any oversight over</p> <p>9 the corporate accounting group.</p> <p>10 Q. (BY MR. RUKAVINA) And in May of 2019, as the</p> <p>11 controller, what were -- what was your role or what</p> <p>12 were your duties?</p> <p>13 A. In May of 2019 I was at that point still</p> <p>14 overseeing the valuation group. I was overseeing the</p> <p>15 corporate accounting group, which my primary direct</p> <p>16 report there was Kristin Hendrix, who really was the</p> <p>17 day-to-day person. But I certainly oversaw her.</p> <p>18 Q. By that you mean the person that answers to</p> <p>19 you?</p> <p>20 A. Correct. Sorry. If I flipped that, I</p> <p>21 apologize. So I was overseeing that group, which had,</p> <p>22 you know, fairly broad responsibilities.</p> <p>23 In terms of, you know, accounting for the</p> <p>24 Advisor, doing forecasts when they were called for,</p> <p>25 performing the audit every year, managing cash,</p>	<p style="text-align: right;">11</p> <p>1 A. Frank Waterhouse.</p> <p>2 Q. And were --</p> <p>3 A. I should clarify too, that the valuation team</p> <p>4 isn't ultimately responsible for the valuations</p> <p>5 themselves, but they do act in this liaison role.</p> <p>6 Q. Perhaps that's my confusion. Is there a</p> <p>7 separate group that handles just valuation?</p> <p>8 A. No.</p> <p>9 Q. Is there an outside consultancy that handled</p> <p>10 that in May of 2019?</p> <p>11 A. I don't know if I would call it consultancy,</p> <p>12 but there was a third-party valuation service provider</p> <p>13 that would do certain of the, call it illiquid, harder</p> <p>14 to value securities.</p> <p>15 Q. So would you say that you were pretty busy in</p> <p>16 April, May 2019?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I've been busy throughout my</p> <p>20 career.</p> <p>21 Q. (BY MR. RUKAVINA) In April, May, June 2019,</p> <p>22 how many hours a month do you estimate you worked for</p> <p>23 Highland?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">10</p> <p>1 processing payroll, things of that nature.</p> <p>2 And then at that time I was also put in</p> <p>3 charge of one of the public REITs that was launching at</p> <p>4 the time under the NexPoint flag. And getting that</p> <p>5 team started.</p> <p>6 Q. Did you mention that in May of 2019 you were</p> <p>7 still involved with the valuation group?</p> <p>8 A. I did.</p> <p>9 Q. Did you have a title at the valuation group?</p> <p>10 A. Nothing distinct from my overall controller</p> <p>11 title. These titles were often, like I said, terms of</p> <p>12 art, whether it was controller or chief accounting</p> <p>13 officer.</p> <p>14 Q. What did the valuation group at Highland do?</p> <p>15 A. Well, valuation group was really a liaison</p> <p>16 with both third-party pricing providers, pricing</p> <p>17 services, brokers on the street, front office, members</p> <p>18 at Highland.</p> <p>19 To, you know, to work on valuing the</p> <p>20 securities held across the platform, both for Highland</p> <p>21 HCMLP managed funds as well as affiliated managed</p> <p>22 funds.</p> <p>23 Q. So who did -- did you report to anyone at the</p> <p>24 valuation group? In other words, did it have its own</p> <p>25 separate hierarchy kind of?</p>	<p style="text-align: right;">12</p> <p>1 THE WITNESS: I don't remember. A</p> <p>2 significant number.</p> <p>3 Q. (BY MR. RUKAVINA) Certainly full-time?</p> <p>4 A. Absolutely.</p> <p>5 Q. Would you say that you were working more than</p> <p>6 200 hours a month in that time frame for Highland?</p> <p>7 A. I don't know how many hours. I should</p> <p>8 clarify, we're using Highland very liberally. When I</p> <p>9 say Highland, supporting the entire apparatus,</p> <p>10 platform. Significant number of hours at that time,</p> <p>11 and before and after.</p> <p>12 Q. And let's explore that a little bit. You</p> <p>13 mentioned one of the funds for NexPoint. I'd like to</p> <p>14 talk about NexPoint Advisors, LP, just NexPoint</p> <p>15 Advisors, LP.</p> <p>16 Did you ever have an official role or title</p> <p>17 with NexPoint Advisors, LP?</p> <p>18 A. Not that I can remember.</p> <p>19 Q. Do you know if you were ever the controller</p> <p>20 for that entity?</p> <p>21 A. I'm not certain. I'm not certain.</p> <p>22 Q. But I take it that pursuant to the shared</p> <p>23 services agreement you, as an employee of Highland,</p> <p>24 were providing services on behalf of NexPoint?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">13</p> <p>1 question.</p> <p>2 THE WITNESS: I provided many of the same</p> <p>3 services for NexPoint Advisors that I provided for</p> <p>4 Highland, similar types of services.</p> <p>5 Q. (BY MR. RUKAVINA) And briefly about Highland</p> <p>6 Capital Management Fund Advisors, LP, HCMFA, did you</p> <p>7 ever have like an official title or role with that</p> <p>8 entity, to your knowledge?</p> <p>9 A. Again, not that I can remember.</p> <p>10 Q. Not to your knowledge, the controller ever of</p> <p>11 that entity?</p> <p>12 A. I'm not certain whether I was or not.</p> <p>13 Q. But you provided services to that entity as</p> <p>14 part of your role at Highland pursuant to shared</p> <p>15 services?</p> <p>16 A. Similar to NexPoint as I described.</p> <p>17 Q. When you were controller of Highland, was</p> <p>18 that an officer-level position at Highland?</p> <p>19 A. No.</p> <p>20 Q. When did you become the chief financial</p> <p>21 officer of Highland?</p> <p>22 A. Chief financial officer?</p> <p>23 Q. Uh-huh.</p> <p>24 A. 2021, March.</p> <p>25 Q. After Mr. Waterhouse was gone?</p>	<p style="text-align: right;">15</p> <p>1 Q. Do you have an expectation as to when the</p> <p>2 winding down and monetization of Highland and its</p> <p>3 assets will be complete?</p> <p>4 A. That's very hard to speculate, especially</p> <p>5 given the amount of litigation that's going on because</p> <p>6 I don't know when that's going to play out and that's a</p> <p>7 material asset.</p> <p>8 Q. Have you discussed with Mr. Seery how long</p> <p>9 that might be?</p> <p>10 A. Not that I can specifically remember.</p> <p>11 Q. Do you believe it will be at least probably</p> <p>12 two years, from today?</p> <p>13 A. I don't know.</p> <p>14 Q. This bonus compensation, does it or any</p> <p>15 amount of it depend on how well Highland or the</p> <p>16 claimant trust, how well they do vis-a-vis collecting</p> <p>17 money from creditors?</p> <p>18 A. Not that I can think of. I'd have to</p> <p>19 probably go back and look and understand the back-end</p> <p>20 piece to say definitively.</p> <p>21 Q. And back-end piece, does that mean whenever</p> <p>22 the winding down is completed?</p> <p>23 A. Yeah, like I said, I'm not exactly -- I'm not</p> <p>24 completely facile with the exact timing, if it's</p> <p>25 completed 100 percent or 80 percent, what kind of</p>
<p style="text-align: right;">14</p> <p>1 A. Yes.</p> <p>2 Q. And I'm going to ask you a little bit about</p> <p>3 your compensation today at Highland.</p> <p>4 You don't have to give me specific numbers</p> <p>5 unless I ask you, please, but I take it you have a base</p> <p>6 compensation?</p> <p>7 A. Yes, I have a base.</p> <p>8 Q. Do you have any bonus structure compensation?</p> <p>9 A. Yes, I have a bonus.</p> <p>10 Q. And what is that bonus number or whether it's</p> <p>11 paid out based upon or contingent upon?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: As I understand, it's based on</p> <p>15 my offer letter.</p> <p>16 Q. (BY MR. RUKAVINA) On your what?</p> <p>17 A. My letter for extending an offer.</p> <p>18 Q. Tell me, what is your -- without having to</p> <p>19 use express numbers, what is your bonus compensation?</p> <p>20 When is it paid, et cetera?</p> <p>21 A. Yeah, so it's not too dissimilar from the</p> <p>22 prior Highland plan that has semiannual installments</p> <p>23 payable. And then there's a, kind of an end of plan</p> <p>24 bonus when -- I don't remember the specifics on exactly</p> <p>25 what triggers that, but it's back-ended in the plan.</p>	<p style="text-align: right;">16</p> <p>1 qualitative considerations go into that. But</p> <p>2 substantially completed.</p> <p>3 Q. Sitting here today, do you think or believe</p> <p>4 that any portion of your compensation over the next</p> <p>5 however long it takes to wind down Highland depends on</p> <p>6 how much Highland recovers from the litigation</p> <p>7 regarding promissory notes?</p> <p>8 A. I really take exception to that question</p> <p>9 because the insinuation is that it's going to somehow</p> <p>10 change my answers here, and it's absolutely not.</p> <p>11 How litigation, it may or may not affect my</p> <p>12 ultimate compensation, but that's not going to affect</p> <p>13 one iota of the answers I give you today or at any</p> <p>14 time, whether I'm on or off the record.</p> <p>15 Q. Fair enough. So you're going to testify</p> <p>16 today truthfully regardless of your compensation. I</p> <p>17 got you; right? Correct?</p> <p>18 A. I didn't follow what you just asked me.</p> <p>19 Q. You're going to testify today truthfully</p> <p>20 regardless of how these events may or may not affect</p> <p>21 your compensation; right?</p> <p>22 A. It's such a loaded question I can't even</p> <p>23 begin to answer that.</p> <p>24 Q. So sitting here today -- I want to ask you</p> <p>25 the same question I did before, and your answer to me</p>

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<p style="text-align: right;">17</p> <p>1 was that you took exception to the insinuation. Now  2 I'd like you to answer my question.  3 Which is, sitting here today, do you believe  4 that any part of your compensation in the future,  5 however long it takes to wind down Highland, is going  6 to depend on how well Highland does in these  7 litigations concerning the notes?  8 A. I believe my ultimate compensation will  9 depend on how long this process takes, which I don't  10 know, and ultimate recoveries to trust beneficiaries  11 under the plan.  12 And so I do expect that it will vary, but I  13 would reiterate my earlier comment.  14 Q. So sitting here today, you understand that if  15 the trust beneficiaries recover more, then you might be  16 compensated more?  17 A. That's possible.  18 Q. Well, sir, I'm not trying to be a smart ass,  19 but --  20 MR. MORRIS: Actually, you're coming awfully  21 close, just to be clear, so be careful, because I'm  22 offended as well. But continue.  23 MR. RUKAVINA: I'm entitled to ask the man  24 about his compensation.  25 MR. MORRIS: Right. And your clients have</p>	<p style="text-align: right;">19</p> <p>1 A. Not in any substance.  2 Q. And when do you recall you might have had  3 those discussions with her?  4 A. I'm not even sure.  5 Q. Would it have been recently or like 9,  6 10 months ago?  7 A. No, it would have been recently.  8 Q. And with Mr. Seery, when did you have a  9 general conversation with Mr. Seery?  10 A. I've had, you know, one or more general  11 conversations with Mr. Seery. It's my understanding  12 that he was the 30(b)(6) witness, and he had questions  13 in preparation for his role in that.  14 Q. So that would have been before last Thursday  15 that you talked to him? I'll represent to you that  16 that's when his deposition was.  17 A. Yeah, if I'm accepting that representation,  18 yes, prior to.  19 Q. Other than that conversation with respect to  20 him preparing for the 30(b)(6), did you have a  21 discussion with him about this litigation as it might  22 relate to your deposition?  23 A. I don't believe so in terms of relating to  24 this deposition. We've talked at length about the  25 notes more generally.</p>
<p style="text-align: right;">18</p> <p>1 \$75 million, hard dollars at stake in this litigation,  2 so we should never believe anything that he says? Is  3 that where we are now?  4 Q. (BY MR. RUKAVINA) Sir, again, what is your  5 bonus compensation as it relates to how well the  6 claimant trust does? Do you remember or not?  7 A. I don't know that that's even something that  8 I could know at this point.  9 Q. In preparing for this deposition, I take it  10 you spoke to legal counsel, and I'm not entitled to  11 know that and I'm not asking that.  12 But did you talk to anyone else?  13 A. I've spoken in general terms to Mr. Seery.  14 Q. Okay. Anyone else?  15 A. I've spoken, again in general terms, to  16 Kristin Hendrix.  17 Q. Anyone else?  18 A. Not that I can think of.  19 Q. Now, I understand you spoke to Ms. Hendrix  20 when legal counsel was present; right?  21 A. Yes.  22 Q. So let's exclude that conversation.  23 Did you have any conversations with  24 Ms. Hendrix regarding this deposition or this  25 litigation at which counsel was not present?</p>	<p style="text-align: right;">20</p> <p>1 Q. And we'll go through that I'm sure.  2 So other than the conversations with  3 Ms. Hendrix and Mr. Seery and, of course, with counsel  4 that I'm not entitled to know about, did you discuss  5 this deposition or what you might be asked today with  6 anyone else?  7 A. No.  8 Q. Okay. Did you read all or any portions of  9 the deposition of Frank Waterhouse?  10 A. Certainly didn't read all of it. I have a  11 general understanding of the topics that were -- that's  12 a bad way to frame it.  13 I have a general understanding of a few  14 points that were covered in his deposition.  15 Q. Were you provided -- were you provided the  16 exact pages of any of his deposition?  17 MR. MORRIS: Objection. Direct him not to  18 answer.  19 MR. RUKAVINA: You're going to direct him not  20 to answer whether he read --  21 MR. MORRIS: If you're asking him whether I  22 directed him to particular --  23 MR. RUKAVINA: I didn't ask that.  24 MR. MORRIS: Rephrase your question.  25 Q. (BY MR. RUKAVINA) Did you read any pages</p>



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<p style="text-align: right;">21</p> <p>1 from Mr. Waterhouse's deposition?</p> <p>2 MR. MORRIS: Objection. Asked and answered.</p> <p>3 You can answer again.</p> <p>4 THE WITNESS: I don't recall -- I don't</p> <p>5 recall reading it.</p> <p>6 Q. (BY MR. RUKAVINA) So were you provided a</p> <p>7 summary of his deposition?</p> <p>8 A. I have had discussions with Mr. Morris in</p> <p>9 preparation for this deposition.</p> <p>10 Q. That's fine. And we can stop there.</p> <p>11 Did you read or -- did you read the whole or</p> <p>12 any portion of Mr. Seery's deposition?</p> <p>13 A. No, I don't believe I -- no, I don't believe</p> <p>14 so.</p> <p>15 Q. Is it the same answer, that whatever you</p> <p>16 discussed would have been through counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Did you see any of the videotape of either</p> <p>19 Mr. Waterhouse's or Mr. Seery's deposition?</p> <p>20 A. No.</p> <p>21 Q. So let's talk about the NexPoint</p> <p>22 \$30.7 million note.</p> <p>23 You're familiar with that note; right?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">23</p> <p>1 was?</p> <p>2 A. Yeah, it was Lauren Thedford, who is Highland</p> <p>3 in-house counsel.</p> <p>4 Q. She's a lawyer?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall from that -- strike that.</p> <p>7 Did you know on or about May 31, 2017 what</p> <p>8 the purpose or reason behind Exhibit 13, this</p> <p>9 promissory note, was?</p> <p>10 MR. MORRIS: Objection to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: The purpose was to take</p> <p>13 existing notes, which I believe were exclusively demand</p> <p>14 notes, I'm not a hundred percent certain on that, and</p> <p>15 roll them into a single note that would have a 30-year</p> <p>16 amortization period.</p> <p>17 Q. (BY MR. RUKAVINA) Do you know why that was</p> <p>18 done?</p> <p>19 A. I believe it was done probably for a number</p> <p>20 of reasons, one of which was to ensure some level of</p> <p>21 cash flow back to Highland, when I say Highland,</p> <p>22 Highland Capital Management, LP, on an annual basis.</p> <p>23 Q. Was that a concern at Highland Capital</p> <p>24 Management, that it wasn't getting any level of cash</p> <p>25 flow back?</p>
<p style="text-align: right;">22</p> <p>1 THE WITNESS: Before I answer that, I'd like</p> <p>2 to see the note.</p> <p>3 Q. (BY MR. RUKAVINA) It's in here. I'm looking</p> <p>4 for the exhibit number. It's in here somewhere.</p> <p>5 A. Yes, I'm familiar with this note.</p> <p>6 Q. Are you familiar with anything having to do</p> <p>7 with the negotiation or execution of this note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat.</p> <p>11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.</p> <p>12 Did you have anything to do, back on or about</p> <p>13 May 31, 2017, with the negotiation or execution of this</p> <p>14 promissory note?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Nothing with respect to the</p> <p>18 negotiation --</p> <p>19 Q. (BY MR. RUKAVINA) I'm sorry.</p> <p>20 A. In terms of the execution, I believe I</p> <p>21 coordinated with internal counsel, who drafted the</p> <p>22 note, and I can't remember -- I can't recall one way or</p> <p>23 the other if I assisted in actually physically</p> <p>24 receiving signatures. I just don't remember.</p> <p>25 Q. Do you remember who that internal counsel</p>	<p style="text-align: right;">24</p> <p>1 A. It wasn't a concern of mine. I don't know if</p> <p>2 it was a concern of others.</p> <p>3 Q. Do you recall whether any auditor ever raised</p> <p>4 that concern?</p> <p>5 A. The auditors did raise that in conjunction</p> <p>6 with the audit that was concluding around this time.</p> <p>7 So yes, they did raise it, you know, probably in the</p> <p>8 May of 2017 time frame.</p> <p>9 Q. Do you know who decided that it would be a</p> <p>10 30-year term note? By that I mean 30 years.</p> <p>11 A. Jim Dondero.</p> <p>12 Q. Do you know if he decided that in connection</p> <p>13 with discussions with anybody or, to your knowledge, he</p> <p>14 just decided?</p> <p>15 A. As far as I know he just decided it. I</p> <p>16 believe there was a draft at one point that was for</p> <p>17 20 years, and he wanted to do 30.</p> <p>18 Q. So this note is executed in May 31, 2017.</p> <p>19 Did you have any further role prior to, let's say,</p> <p>20 December 1, 2020 with respect to anything to do with</p> <p>21 this promissory note?</p> <p>22 A. Sorry, tell me the date again.</p> <p>23 Q. From execution of the note until December 1,</p> <p>24 2020?</p> <p>25 A. And the question was?</p>

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<p style="text-align: right;">25</p> <p>1 Q. Did you have any role in that time frame with 2 respect to this promissory note on behalf of Highland? 3 MR. MORRIS: Objection to the form of the 4 question. 5 THE WITNESS: I don't know how to answer 6 that, it's such an open-ended question. I just don't 7 know how to respond to that. 8 Q. (BY MR. RUKAVINA) If payments were made on 9 this note, would you have any duty to record or credit 10 those payments? 11 MR. MORRIS: Objection to the form of the 12 question. 13 THE WITNESS: I wouldn't have personally in 14 my role, but my team would have been involved in the 15 recording of those. 16 Q. (BY MR. RUKAVINA) And when payments were due 17 on this note, did you personally have any role with 18 respect to doing anything to facilitate those payments? 19 A. When payments were due did I have anything -- 20 yes. 21 Q. What was your role? 22 A. So my role, as part of the corporate team, 23 part of our role is managing cash at the various 24 entities. So I was involved in weekly cash meetings, 25 where things like upcoming, whether it's an obligation</p>	<p style="text-align: right;">27</p> <p>1 Capital Management or NexPoint Advisors as to a 2 decision as to whether any prepayments on this note 3 would ever be made? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: Can you repeat. 7 Q. (BY MR. RUKAVINA) Let's start from scratch. 8 Do you have any memory of any payments being 9 made on this note, Exhibit 13, prior to their scheduled 10 dates of payment? 11 A. There were payments on -- and to be clear, 12 we're talking about the original 30.7- NexPoint 13 promissory note? There were payments that I recall 14 happening throughout 2019 on this note. 15 Q. And we can look at Exhibit 14. 16 MR. MORRIS: What number? 17 MR. RUKAVINA: 14, 1-4. 18 Q. (BY MR. RUKAVINA) And those are only 19 numbered because Ms. Hendrix, they were used for her 20 deposition. 21 A. Sure. Just trying to keep these in order, I 22 apologize. Got it. 23 Q. Do you recognize Exhibit 14? 24 A. Generally. I can't say that I can verify 25 that this is completely accurate. But it looks</p>
<p style="text-align: right;">26</p> <p>1 or a receipt, would be put on people's radars. 2 And we would, in connection with the 30-year 3 notes such as this one from NexPoint, we would either 4 confer with Jim or -- certainly Jim. Also likely his 5 accountant. 6 In terms of teeing them up to make sure that 7 they were prepared from a cash flow statement to make 8 the payment. 9 Q. What do you mean by his accountant? 10 A. Melissa Schroth. 11 Q. What do you mean by his? That's a new name 12 to me. Who is Melissa Schroth? 13 A. I find it hard to believe that she's a new 14 name to you. But I think her title was executive 15 accountant, and she was the keeper of Jim's -- many of 16 Jim's trusts and personal entities. 17 Q. Was she a Highland employee? 18 A. She was. And when I say Highland, I should 19 be clear, Highland Capital Management, LP. 20 Q. So when you say Jim's accountant, she was 21 still a debtor employee, just that she handled 22 primarily Jim's personal matters? 23 A. She was still a Highland Capital Management, 24 LP employee but she did Jim's personal matters. 25 Q. Did you have any role at either Highland</p>	<p style="text-align: right;">28</p> <p>1 familiar to a loan amortization schedule. 2 Q. Would it have been maintained by Highland? 3 A. Yes. 4 Q. And I'll tell you that no one has yet to 5 authenticate this with a hundred percent precision, so 6 I'm not asking you to ratify these numbers, but let's 7 assume that they are what they are. 8 This does purport to show on the second page 9 a number of transfers in 2019, which goes along with 10 your recent answer. 11 Do you see those, sir? 12 A. I do. 13 Q. In particular, 750,000, then 1.3 million, 14 300,000, 2.1 million, 630,000, 1.3 million. 15 You see all those, sir? 16 A. Yes, I see every one. 17 Q. Do you have any memory, without going into 18 those transfers of those dates to the dollar, do you 19 have any memory that those transfers were made? 20 A. Yes. Again, not a specific recollection of 21 where I was at the time, but yes, I know that these 22 transfers were made. 23 Q. Do you know why they were made in those 24 amounts and on those dates? 25 A. No, not without speculating.</p>



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<p style="text-align: right;">29</p> <p>1 Q. What would be your speculation if you were to 2 speculate?</p> <p>3 A. My speculation would be that it would be for 4 liquidity needs at HCMLP, Highland Capital Management, 5 LP, needing liquidity to operate. Again, that's 6 speculation. I don't know for a fact that that's true, 7 but that's what I would assume.</p> <p>8 Q. Who would have made those decisions in 2019 9 to transfer those funds?</p> <p>10 MR. MORRIS: Objection to the form of the 11 question.</p> <p>12 THE WITNESS: Yeah, it would have been either 13 Frank or Jim. I can't say with certainty, but one of 14 the two. When I say Jim, I should be clear, 15 Mr. Dondero.</p> <p>16 Q. (BY MR. RUKAVINA) Between January and 17 July 2019, do you have any recollection that there was 18 any particular liquidity issue or need at Highland 19 Capital Management?</p> <p>20 A. Yeah, Highland was dealing with liquidity 21 problems throughout 2019. Maybe not every single day 22 of the year, but we were continuously needing to bridge 23 liquidity.</p> <p>24 Q. And you joined Highland in 2009. From that 25 point in time, 2009, through 2019, was there any</p>	<p style="text-align: right;">31</p> <p>1 them had been made and you executed them?</p> <p>2 A. Both, depending on the circumstances.</p> <p>3 Q. So sometimes you would be brought into a 4 discussion?</p> <p>5 A. Yes.</p> <p>6 Q. And can you think of any particular example?</p> <p>7 A. Of when I was brought into the discussion of 8 whether to transfer? I can't think of an individual 9 example but we met quite regularly with Jim on cash. 10 So to the extent that either he needed cash 11 on one of his entities, he might let us know that. Or 12 to the extent that Highland needed cash, we might let 13 him know that and ask for basically his assistance in 14 helping us to meet our own cash needs.</p> <p>15 Q. And did he usually find a way to facilitate 16 the cash need either at one of his entities or at 17 Highland?</p> <p>18 A. I suppose until October 16 of 2019.</p> <p>19 Q. Yes. Prior to bankruptcy, do you recall any 20 instance where one entity wasn't able to transfer funds 21 to another for liquidity purposes?</p> <p>22 A. I can't think of a specific situation. But 23 I'm sure there were situations where -- you know, cash 24 was always something that was being juggled, so I don't 25 know that necessarily liquidity could be met the same</p>
<p style="text-align: right;">30</p> <p>1 practice at the enterprise of those businesses to 2 transfer funds between each other on a basis of when 3 one needed it and one had it?</p> <p>4 A. Yes, that was a fairly, generally speaking, 5 that was a fairly common practice, of using different 6 entities within the overall structure to bridge 7 liquidity.</p> <p>8 Q. Would that have been Mr. Dondero who, in the 9 final analysis, would have made those decisions?</p> <p>10 A. Maybe not a hundred percent, but I'd say 11 the -- if not a hundred percent, certainly most.</p> <p>12 Q. And who else might have participated, 13 Mr. Waterhouse?</p> <p>14 A. Potentially Mr. Waterhouse. And the reason I 15 hedge on that a little bit is I don't think Frank would 16 have made any of these decisions on his own either. 17 But I may have heard them from Frank via Jim.</p> <p>18 Q. So in those same years, were you ever asked 19 by Mr. Dondero or Mr. Waterhouse as to whether funds 20 should be transferred from one entity to another for 21 liquidity purposes?</p> <p>22 A. Can you ask that again, please.</p> <p>23 Q. Yes. Trying to understand, were you part of 24 those discussions as to whether these transfers should 25 be made, or did you just learn that a decision to make</p>	<p style="text-align: right;">32</p> <p>1 day.</p> <p>2 But eventually we were able to manage through 3 those situations, you know, oftentimes through some of 4 these loans.</p> <p>5 Q. In instances that you may remember when 6 Highland Capital Management needed liquidity, do you 7 know how Mr. Dondero decided from which other entity to 8 transfer the cash?</p> <p>9 A. I can't step into his brain and think about 10 his decision-making process, but if I was going to 11 oversimplify it I would speculate that it would be 12 based on who has cash in that moment.</p> <p>13 Q. Would he ask you or someone on your team who 14 had cash?</p> <p>15 A. At times, depending on which entity we're 16 talking about. Because my team certainly didn't have 17 responsibility for every single entity in the 18 enterprise, but we did have responsibility for some.</p> <p>19 Q. And if your team -- so -- strike that.</p> <p>20 So over the general -- talking about 21 generally now, over those 10 years when there were 22 these intercompany transfers for liquidity purposes, 23 how were they booked by the debtor, by Highland Capital 24 Management?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">33</p> <p>1 question.</p> <p>2 THE WITNESS: Help me on the direction. So</p> <p>3 this is money that Highland is receiving or money that</p> <p>4 Highland is sending?</p> <p>5 Q. (BY MR. RUKAVINA) Sending out.</p> <p>6 A. Sending out. So this is -- in the scenario</p> <p>7 that you're describing, this money that Highland is</p> <p>8 sending out to meet some other corporate obligor's</p> <p>9 liquidity needs?</p> <p>10 Q. Yes, sir.</p> <p>11 A. So those would be booked as a loan. I</p> <p>12 would -- I need to hedge a little bit because I'm not</p> <p>13 a hundred percent certain, but I would say if not</p> <p>14 exclusively via loans close to exclusively.</p> <p>15 Q. And would they -- strike that.</p> <p>16 Would they usually be papered up with a</p> <p>17 promissory note?</p> <p>18 A. Yes.</p> <p>19 Q. Now, why was that the general course during</p> <p>20 10 years? Was there a policy and procedure in place,</p> <p>21 or would Dondero say book it as a loan, or was that</p> <p>22 just the right thing to do from an accounting</p> <p>23 perspective?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">35</p> <p>1 Q. (BY MR. RUKAVINA) To your knowledge, was</p> <p>2 there any written policy or procedure in place at</p> <p>3 Highland Capital Management with respect to how</p> <p>4 transfers from Highland to an affiliated entity should</p> <p>5 be booked or treated?</p> <p>6 A. No written policy or procedure that I'm aware</p> <p>7 of.</p> <p>8 Q. Is it fair to say that by May 2019, the</p> <p>9 corporate accounting group had handled so many of these</p> <p>10 transfers that it believed that if Highland was</p> <p>11 transferring funds to another affiliated entity, it's</p> <p>12 probably a loan?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yeah, I don't know that I can</p> <p>16 answer that in terms of the corporate accounting team.</p> <p>17 That just feels way too broad.</p> <p>18 It was certainly the practice that when</p> <p>19 somebody needed liquidity and it was appropriate from an</p> <p>20 accounting perspective, that's how it would be booked.</p> <p>21 And there was no reason to doubt that that was</p> <p>22 the appropriate way to do it, particularly with</p> <p>23 direction from either Frank or Jim.</p> <p>24 Q. (BY MR. RUKAVINA) Is it your testimony that</p> <p>25 in each instance that happened, that either Frank or</p>
<p style="text-align: right;">34</p> <p>1 THE WITNESS: At the end of the day it's at</p> <p>2 the direction of Jim Dondero, so I can't tell you</p> <p>3 exactly why he wanted it to be done that way. But that</p> <p>4 was certainly the practice of how it was done in those</p> <p>5 situations.</p> <p>6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim</p> <p>7 Dondero ever tell you or anyone else that when Highland</p> <p>8 is transferring funds to one of his affiliated entities</p> <p>9 that it should always be booked as a loan?</p> <p>10 A. So remembering 10 years' worth of</p> <p>11 conversations, I can't remember a specific instance</p> <p>12 where he would have said, always book every single</p> <p>13 transaction I direct you to do as a loan. However,</p> <p>14 that was the practice.</p> <p>15 Q. Different question.</p> <p>16 Do you remember that in each instance, and</p> <p>17 again, that might be unfair over 10 years, but do you</p> <p>18 remember in each instance when Mr. Dondero said</p> <p>19 transfer money from Highland to this other entity for</p> <p>20 liquidity needs that he said book it as a loan?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I can't recall with any</p> <p>24 specificity what he may or may not have specifically</p> <p>25 said so long ago.</p>	<p style="text-align: right;">36</p> <p>1 Jim said, this is a loan, the "this" being the transfer</p> <p>2 from Highland to an affiliated entity for liquidity</p> <p>3 purposes?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I can't recall with that level</p> <p>7 of specificity if those words came out of Jim's mouth.</p> <p>8 But with 0 percent doubt in my mind, every single one</p> <p>9 of those loans was done with the authority of Jim or</p> <p>10 Frank, or both.</p> <p>11 Q. (BY MR. RUKAVINA) So going back to this</p> <p>12 Exhibit 14, now I'm going to ask you about these</p> <p>13 payments coming in.</p> <p>14 Assuming that these payments were actually</p> <p>15 made in 2019 --</p> <p>16 And I think, John, you sent me this morning,</p> <p>17 or maybe last night, some bank statements?</p> <p>18 MR. MORRIS: I actually sent all of the</p> <p>19 backup for all payments made, I think, under the notes</p> <p>20 at issue a week or two ago.</p> <p>21 Q. (BY MR. RUKAVINA) How would -- so assuming</p> <p>22 that these payments in 2019 that NexPoint made didn't</p> <p>23 technically have to be made at that point in time, how</p> <p>24 would Highland have booked these payments?</p> <p>25 A. So I can't tell the column headers, so you'll</p>

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<p style="text-align: right;">37</p> <p>1 have to excuse me if I flip them.</p> <p>2 Q. They'll be on the first page. Rip the page</p> <p>3 off if you need to.</p> <p>4 A. First one is interest, second one is</p> <p>5 principal. On the far right is the actual amount of</p> <p>6 the payment. So, for example, March 29, 750,000.</p> <p>7 And the -- the column that has the negative</p> <p>8 411,000 is the application of interest and the 338- is</p> <p>9 the application of principal.</p> <p>10 Q. So again, if Highland -- strike that.</p> <p>11 If NexPoint made a payment that was not</p> <p>12 technically due at that point in time, it would be</p> <p>13 recorded as payments on principal and interest?</p> <p>14 A. It would be recorded as it's reflected in the</p> <p>15 schedule. So there's an application of interest and an</p> <p>16 application of principal.</p> <p>17 Q. So based on your understanding and</p> <p>18 experience, if that payment wasn't due at that time,</p> <p>19 would it have been a prepayment by NexPoint?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Yeah, I'm not sure that it's a</p> <p>23 prepayment or not. It's certainly a payment. It's</p> <p>24 certainly voluntary. It's not spelled out under the</p> <p>25 schedule. I don't know that it's a per se, capital P,</p>	<p style="text-align: right;">39</p> <p>1 question.</p> <p>2 Q. (BY MR. RUKAVINA) And his objection is</p> <p>3 valid. And just to give you a little bit of a fine</p> <p>4 point, does someone look at the promissory note to</p> <p>5 decide that? Or is there some other rule or procedure</p> <p>6 that someone looks at?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: So the person -- I don't know</p> <p>10 that I can specifically name a person because the role</p> <p>11 probably changed over time.</p> <p>12 But either our corporate accountant, or the</p> <p>13 corporate accountant's boss, which was Kristin Hendrix</p> <p>14 for years, would have been responsible for recording and</p> <p>15 tracking those payments.</p> <p>16 So some combination of the corporate</p> <p>17 accountant and Kristin would have applied those</p> <p>18 payments, and that rolls up through my and Frank's</p> <p>19 review ultimately.</p> <p>20 Q. (BY MR. RUKAVINA) So if I can round off this</p> <p>21 discussion, I think you told me a few minutes ago that</p> <p>22 in each instance that Highland was transferring money</p> <p>23 out to an affiliate.</p> <p>24 Whether or not you remember Dondero or</p> <p>25 Waterhouse saying it's a loan, it would have been a</p>
<p style="text-align: right;">38</p> <p>1 prepayment. I'm just not certain.</p> <p>2 Q. (BY MR. RUKAVINA) Well, maybe without</p> <p>3 respect to these specific transfers.</p> <p>4 Generally, generally, if one of the Dondero</p> <p>5 affiliates made a payment that wasn't scheduled, how</p> <p>6 would the debtor have accounted for that payment?</p> <p>7 A. It would have recorded the payment as a</p> <p>8 reduction to either or both outstanding accrued</p> <p>9 interest or principal.</p> <p>10 Q. You wouldn't call those prepayments?</p> <p>11 A. I don't know the definition of prepayment.</p> <p>12 It's a payment. It's off schedule, but I don't know</p> <p>13 whether it's a per se prepayment.</p> <p>14 Q. Would that be something in your experience</p> <p>15 that we would look at the promissory note to maybe</p> <p>16 determine?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking</p> <p>21 you the same question just in different ways.</p> <p>22 Who decides at the debtor, or how does the</p> <p>23 debtor decide, if an unscheduled payment is made, how</p> <p>24 to apply it?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">40</p> <p>1 loan because that's how it always was and it was always</p> <p>2 authorized. Generally correct?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: There were a few "always" and</p> <p>6 "generally" in there. And like I said, when it came</p> <p>7 to liquidity needs, my recollection is that these would</p> <p>8 be handled via loans.</p> <p>9 Q. (BY MR. RUKAVINA) And in reverse, if a</p> <p>10 Dondero entity made a payment prior to a scheduled</p> <p>11 payment on a note, generally there would be credit</p> <p>12 against principal and/or interest provided on that</p> <p>13 note?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: Generally speaking, yes, if the</p> <p>17 payment was for payment on the note.</p> <p>18 Q. (BY MR. RUKAVINA) Well, that goes back to my</p> <p>19 question.</p> <p>20 Do you know how these payments on Exhibit 14</p> <p>21 in 2019 were determined to be payments on these notes,</p> <p>22 as opposed to a transfer from NexPoint to Highland for</p> <p>23 some other reason?</p> <p>24 A. What other reason would it be, if I can be so</p> <p>25 bold.</p>

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<p style="text-align: right;">41</p> <p>1 Q. Can you think of any other reason in 2019?</p> <p>2 A. Well, Highland had -- Highland had shared</p> <p>3 services and intercompany agreements with NexPoint, at</p> <p>4 this time.</p> <p>5 But these were not payments that could</p> <p>6 possibly be confused with those payments. These are</p> <p>7 off cycle, they're larger amounts, and there's nothing</p> <p>8 that they could be other than payments against the</p> <p>9 loan.</p> <p>10 Q. So I asked you before, and I think you said</p> <p>11 that you were speculating with respect to these</p> <p>12 payments, that Highland needed money at that time.</p> <p>13 Do you recall in 2019 any discussions with</p> <p>14 anyone, Dondero or Waterhouse, to the effect that</p> <p>15 NexPoint has excess cash so maybe NexPoint should</p> <p>16 transfer some money to Highland?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: Do I still answer?</p> <p>19 Q. (BY MR. RUKAVINA) Yes.</p> <p>20 MR. MORRIS: Yes.</p> <p>21 THE WITNESS: And sorry, I got lost there.</p> <p>22 Q. (BY MR. RUKAVINA) Yes. So my predicate was</p> <p>23 you testified before that you were assuming that these</p> <p>24 payments were because of a cash need at Highland;</p> <p>25 right?</p>	<p style="text-align: right;">43</p> <p>1 THE WITNESS: Yeah, the premise of that,</p> <p>2 given that Mr. Dondero is in control of both sides,</p> <p>3 it's a faulty premise.</p> <p>4 Q. (BY MR. RUKAVINA) But you told me not that</p> <p>5 long ago that in these weekly cash meetings that it</p> <p>6 would be your team at Highland who would go to</p> <p>7 Mr. Dondero and say Highland has a liquidity issue.</p> <p>8 So wouldn't that liquidity issue have</p> <p>9 originated with the Highland team?</p> <p>10 A. Mr. Dondero is the president of Highland.</p> <p>11 He's the president of NexPoint. We're employees of</p> <p>12 Highland. We're also shared services providers for</p> <p>13 NexPoint.</p> <p>14 The waters are very muddy in terms of who is</p> <p>15 wearing what hat in that conversation.</p> <p>16 Q. But Mr. Dondero doesn't know that Highland</p> <p>17 has a liquidity issue unless someone from the corporate</p> <p>18 accounting group tells him, does he?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question. I hope that's not the case.</p> <p>21 THE WITNESS: He has the ability to know what</p> <p>22 our cash position is at any given time, at that time.</p> <p>23 Q. (BY MR. RUKAVINA) So why would you have</p> <p>24 these weekly cash meetings with Mr. Waterhouse and</p> <p>25 sometimes Mr. Dondero?</p>
<p style="text-align: right;">42</p> <p>1 A. Correct.</p> <p>2 Q. So with that predicate my question is, do you</p> <p>3 recall discussing with Dondero or Waterhouse or with</p> <p>4 anyone as to why NexPoint would be transferring money</p> <p>5 to Highland at that time?</p> <p>6 A. Yes, I would have had conversations with</p> <p>7 Mr. Dondero or Mr. Waterhouse.</p> <p>8 Q. And do you remember specifically in 2019 why</p> <p>9 these transfers were made from NexPoint as opposed to</p> <p>10 some other Dondero entity?</p> <p>11 A. Not with specificity, but certainly NexPoint</p> <p>12 was generating cash at that time, and had the ability</p> <p>13 to assist with Highland's liquidity.</p> <p>14 Q. So sitting here today, you've told me</p> <p>15 generally and logically that you have no specific</p> <p>16 memory why between January 2019 and August 2019, any of</p> <p>17 these payments on Exhibit 14 were made by NexPoint?</p> <p>18 A. I have no specific memory, but I would say</p> <p>19 with certainty that most or all of this was driven by</p> <p>20 Highland HCMLP liquidity needs.</p> <p>21 Q. And most or all of this would have been</p> <p>22 Highland in the first instance going to NexPoint and</p> <p>23 saying, hey, can you send us some cash?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">44</p> <p>1 A. So these were cash forecasts, looking at</p> <p>2 outlook. I can tell you almost without exception,</p> <p>3 maybe -- with maybe without exception, be speculating,</p> <p>4 but those forecasts would be showing negative numbers</p> <p>5 at Highland, virtually nonstop.</p> <p>6 And so it was important, my opinion, but it</p> <p>7 was probably important to Frank to make sure that he</p> <p>8 was getting in front of Jim to make sure that those</p> <p>9 needs were being addressed timely.</p> <p>10 Q. So I've asked that question. I want to ask</p> <p>11 you a different question.</p> <p>12 For any of these payments between</p> <p>13 January 2019 and August 2019 reflected on Exhibit 14,</p> <p>14 do you have any personal knowledge as to whether they</p> <p>15 were intended to be prepayments or not?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know whether they were</p> <p>19 intended to be prepayments at that time.</p> <p>20 Q. (BY MR. RUKAVINA) Sitting here today, seeing</p> <p>21 this document as a CPA and as a sophisticated person,</p> <p>22 do you read this Exhibit 14 to indicate that those</p> <p>23 payments were booked as prepayments?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>



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<p style="text-align: right;">45</p> <p>1 THE WITNESS: Again, the term "prepayments"</p> <p>2 is the one I'm struggling with. I can ascertain that</p> <p>3 there are payments and they're off schedule. But I</p> <p>4 don't know that I can ascertain that they're</p> <p>5 prepayments.</p> <p>6 Q. (BY MR. RUKAVINA) Well, if a borrower makes</p> <p>7 a payment that's ahead of schedule, how would that</p> <p>8 generally be accounted for?</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: It would be accounted for as a</p> <p>12 reduction of principal or interest or some combination</p> <p>13 of the two.</p> <p>14 Q. (BY MR. RUKAVINA) Which would relieve the</p> <p>15 borrower of having to make that at some point in the</p> <p>16 future; right?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: No. The borrower still owes</p> <p>20 the money. This is showing 23-point -- pick a date.</p> <p>21 May 31, 23.034-. That there's significant obligations</p> <p>22 that are still outstanding.</p> <p>23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm</p> <p>24 sorry, on June 19, 2019, the borrower made a</p> <p>25 \$2.1 million payment. That's what this shows; correct?</p>	<p style="text-align: right;">47</p> <p>1 that the maker may pay outstanding accrued interest, or</p> <p>2 unpaid principal.</p> <p>3 Q. (BY MR. RUKAVINA) But my question is, as I</p> <p>4 understand accrued interest, it means interest that has</p> <p>5 already occurred or accrued as of the date, like</p> <p>6 today's date; right?</p> <p>7 A. Uh-huh.</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 Q. (BY MR. RUKAVINA) Do you agree with that?</p> <p>11 Do you agree with that? Accrued interest</p> <p>12 means interest that has already come due, that has</p> <p>13 actually happened because interest happens over time.</p> <p>14 A. Accrued interest --</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 Q. (BY MR. RUKAVINA) Why don't you start. Why</p> <p>18 don't you define for me accrued interest.</p> <p>19 A. Sure. Accrued interest would be outstanding</p> <p>20 and unpaid interest that -- sorry, it's hard to define</p> <p>21 it without using the term. But it's interest that's</p> <p>22 accumulated in respect of a principal amount through a</p> <p>23 given date.</p> <p>24 Q. So how do you prepay accrued interest?</p> <p>25 A. How do you prepay accrued interest. Again,</p>
<p style="text-align: right;">46</p> <p>1 A. I see that.</p> <p>2 Q. You're not saying that the borrower would</p> <p>3 ever have to make that same \$2.1 million payment again,</p> <p>4 are you?</p> <p>5 A. No. What I'm saying is, based on that 2.1-</p> <p>6 payment -- and this is reading this cold.</p> <p>7 But based on that 2.1- payment, 66,000 was</p> <p>8 applied to interest, which left zero accrued interest</p> <p>9 outstanding. 2.03- applied to principal, which left</p> <p>10 24.7- and change still outstanding.</p> <p>11 Q. Well, I'm going to ask you about the</p> <p>12 promissory note then, Exhibit 13, in particular</p> <p>13 Section 3, where it says prepayment allowed.</p> <p>14 And the first sentence says, may or -- pardon</p> <p>15 me, maker may prepay in whole or in part the unpaid</p> <p>16 principal or accrued interest of this note.</p> <p>17 Do you see that, sir?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. In your experience, can someone prepay</p> <p>20 accrued interest?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: The document reads, maker may</p> <p>24 prepay in whole or in part the unpaid principal or</p> <p>25 accrued interest of this note. So I read that to say</p>	<p style="text-align: right;">48</p> <p>1 that's a little bit of a mental jumble.</p> <p>2 Q. Exactly.</p> <p>3 A. Well, what I'm...</p> <p>4 Q. To me one pays accrued interest. But this</p> <p>5 note says you can prepay accrued interest. So I'm just</p> <p>6 seeing whether you as a CPA, CFO and controller for</p> <p>7 years agrees that one can prepay accrued interest?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Frankly, I don't know if it's</p> <p>11 possible. That's not how I'm seeing it applied here,</p> <p>12 based on the quick review of Exhibit 14.</p> <p>13 Q. (BY MR. RUKAVINA) Well, the next sentence</p> <p>14 says, any payments on this note shall be applied first</p> <p>15 to unpaid accrued interest hereon, and then to unpaid</p> <p>16 principal hereof.</p> <p>17 Do you see that, sir?</p> <p>18 A. I see that.</p> <p>19 Q. Do you have any understanding based either on</p> <p>20 your personal knowledge or in your expertise as a CPA</p> <p>21 and a CFO as to what that sentence means?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: The way that I would read that</p> <p>25 would be that for a payment, for example, pick a date,</p>

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<p style="text-align: right;">49</p> <p>1 Exhibit 14 again, the \$2.1 million payment on or about  2 June 19. I see that a payment was made.  3 And it was -- it appears that there was  4 accrued and unpaid interest at that time of 66,000. And  5 so the first 66,000 was applied to outstanding accrued  6 interest, to bring the balance to zero.  7 And the difference between that 66,000 and the  8 2.1 million was applied to principal.  9 Q. (BY MR. RUKAVINA) Do you believe, whether  10 from personal knowledge from this note, Exhibit 13, or  11 your experience at Highland or as a CPA, that one can  12 say that interest, accrued interest will be due on a  13 future date, it will accrue by that date, but I'm going  14 to pay it earlier as of that date?  15 MR. MORRIS: Objection to the form of the  16 question.  17 THE WITNESS: If I can rephrase back to you  18 just so I make sure I'm understanding the question.  19 You're saying could someone say, I would like to prepay  20 interest into the future. It hasn't accrued yet, but  21 it will be accrued by end of year.  22 And I would like to be prepaid effectively  23 with respect to that interest, and then have the  24 remainder used to pay down principal.  25 The question is, can someone do that?</p>	<p style="text-align: right;">51</p> <p>1 believe that has been done in a specific circumstance.  2 Q. So at least at Highland, you would believe  3 that that phrase, prepaying accrued interest, had some  4 established meaning at Highland?  5 MR. MORRIS: Objection to the form of the  6 question.  7 THE WITNESS: No, I don't agree with that.  8 Q. (BY MR. RUKAVINA) Okay. You understand, of  9 course, that it's Highland's position that with respect  10 to this note, a payment was due on December 31 of 2020  11 that wasn't made; correct?  12 A. Yes, it's my understanding -- if I can state  13 it back just so I make sure I'm getting it correctly.  14 It's my understanding that there was a payment due on  15 December 31, 2020, that wasn't made timely, yes.  16 Q. Okay. Do you know why that payment wasn't  17 made timely?  18 A. By recollection, because Mr. Dondero had  19 directed people not to process payments from Highland  20 affiliates to Highland.  21 Q. When did you learn of that?  22 A. Early December 2020.  23 Q. How did you learn of that?  24 A. I don't specifically remember the  25 conversation, but I know I had conversations with both</p>
<p style="text-align: right;">50</p> <p>1 Q. (BY MR. RUKAVINA) Yes.  2 MR. MORRIS: I object to the question.  3 THE WITNESS: I suppose it's possible, but  4 that certainly wasn't the practice if that makes sense.  5 Q. (BY MR. RUKAVINA) That does make sense. I'm  6 still struggling, and again, I'm not trying to be a  7 smart aleck. I'm still struggling with the first  8 sentence of paragraph 3, that maker may prepay accrued  9 interest.  10 And it sounds like to me like you don't  11 necessarily have a definitive answer as to what that  12 might have meant either.  13 MR. MORRIS: Objection to the form of the  14 question.  15 THE WITNESS: I think the document speaks for  16 itself in that sentence.  17 Q. (BY MR. RUKAVINA) But have you seen  18 something like this, to your recollection, in other  19 Highland promissory notes?  20 A. Something like what?  21 Q. Prepaying accrued interest.  22 A. Yes, I have seen that.  23 Q. What's your memory? Where have you seen  24 that?  25 A. I can't remember a specific note, but I</p>	<p style="text-align: right;">52</p> <p>1 Kristin and Frank. I can't remember if those were  2 individual or collective, but we understood that to be  3 the marching orders.  4 Q. Did you hear Mr. Dondero say anything like  5 that?  6 A. I did not.  7 Q. Did Mr. Waterhouse tell you that Mr. Dondero  8 said something like that to him?  9 A. Yes.  10 Q. Okay. Separately, do you remember whether  11 Ms. Hendrix told you that Mr. Waterhouse told her that,  12 or would it have been kind of at the same meeting?  13 A. I don't remember specifically. It would have  14 been all around the same time.  15 Q. And to the best of your recollection, what  16 words -- strike that.  17 To the best of your recollection, did  18 Mr. Waterhouse include a reference to promissory notes  19 and the Advisors when he said that Dondero told him not  20 to make payments?  21 MR. MORRIS: Objection to the form of the  22 question.  23 THE WITNESS: I don't remember the specific  24 words that Mr. Waterhouse used. My clear impression  25 was that it was a very global instruction.</p>



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<p style="text-align: right;">53</p> <p>1 And I should clarify also that, you know, at  2 this time, I think as we covered in my background.  3 At this point I had assumed the chief  4 accounting officer role, so I wasn't necessarily in  5 the -- in as much of the chain of command as I had been  6 previously to taking that role, where that sort of thing  7 might have come from Frank, to me, to Kristin.  8 By this time, Frank and Kristin were  9 communicating and I was sometimes in the loop, sometimes  10 not.  11 Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell  12 you why Dondero had told him that?  13 A. I don't remember with any specificity.  14 However, my perception at the time was that at this  15 time the relationship between Mr. Dondero and Mr. Seery  16 was hopelessly broken, and that this was Jim Dondero,  17 you know, gearing up for a fight in the future.  18 Q. Prior to December of 2020, had you prepared a  19 report showing potential overpayments that NexPoint and  20 HCMFA had made on account of shared services and  21 payroll reimbursement?  22 MR. MORRIS: Objection to the form of the  23 question.  24 You can answer.  25 THE WITNESS: I know the analysis that you're</p>	<p style="text-align: right;">55</p> <p>1 analysis, right or wrong, suggested that the Advisors  2 had made large overpayments?  3 MR. MORRIS: Objection to the form of the  4 question.  5 THE WITNESS: No, that's incorrect.  6 Q. (BY MR. RUKAVINA) Why is that incorrect?  7 A. Because by recollection, to the best of my  8 recollection, that analysis didn't occur until after  9 Dondero had told Frank no more payments.  10 Q. Is that the only reason why you might suspect  11 that what I just said was incorrect?  12 MR. MORRIS: Objection to the form of the  13 question.  14 THE WITNESS: Yeah, I don't know how to  15 answer that.  16 Q. (BY MR. RUKAVINA) I'm going back, when I  17 asked you, did Waterhouse tell you why Dondero gave the  18 direction, you said no.  19 MR. MORRIS: Objection to the form of the  20 question.  21 THE WITNESS: Sorry, I'm not sure. If I  22 could have the question asked again, I'd be happy to  23 answer.  24 Q. (BY MR. RUKAVINA) I'll ask it again.  25 Mr. Waterhouse tells you that Mr. Dondero</p>
<p style="text-align: right;">54</p> <p>1 talking about. I would not characterize it the way  2 that you characterized it.  3 Q. (BY MR. RUKAVINA) And we'll talk about this  4 more in November, so I really don't want to go into any  5 detail, unless you feel the need to.  6 But, so you did not prepare that analysis?  7 MR. MORRIS: Objection to the form of the  8 question.  9 THE WITNESS: I prepared an analysis that  10 differed from how you described it.  11 Q. (BY MR. RUKAVINA) How would you describe it,  12 in a nutshell?  13 A. I would describe it as I was asked to refresh  14 a spreadsheet using certain assumptions, based on the  15 direction of Frank Waterhouse, and I updated and I sent  16 him an email.  17 Q. Do you have any understanding that that  18 analysis was then shared with Mr. Dondero by  19 Mr. Waterhouse?  20 A. I know that now. I didn't know that at the  21 time.  22 Q. Do you have any understanding -- strike that.  23 Did you have any understanding that as of  24 early December 2020 the reason why Mr. Dondero said  25 what he said to Mr. Waterhouse was because that</p>	<p style="text-align: right;">56</p> <p>1 basically said no more payments; right?  2 A. Yes.  3 Q. And, but he did not tell you why Mr. Dondero  4 said that?  5 A. Not that I can recall.  6 Q. So he might have?  7 A. He might have. I don't specifically  8 remember.  9 Q. Do you recall asking him or anyone else why  10 Dondero would have said that?  11 MR. MORRIS: Objection. Asked and answered.  12 THE WITNESS: I don't recall specifically  13 asking.  14 Q. (BY MR. RUKAVINA) Do you recall telling  15 Mr. Seery that Dondero said anything like that?  16 A. At what point in time?  17 Q. Prior to December 31, 2020.  18 A. No, I did not. I did not say that to  19 Mr. Seery.  20 Q. In your mind was there any present  21 understanding or concern that NexPoint therefore  22 wouldn't make a scheduled December 31, 2020, payment?  23 A. Was there any concern that they wouldn't?  24 Q. Yeah.  25 A. I would never use the word "concern." At</p>

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<p style="text-align: right;">57</p> <p>1 that point I wasn't even on the team anymore, so I hate  2 to say it's other people's problem, but I had my hands  3 full with plenty of other things. It wasn't something  4 I was thinking about.  5 Q. Do you remember here today that prior to  6 December 31, 2020, you believed that NexPoint would not  7 make the scheduled payment?  8 MR. MORRIS: Objection to the form of the  9 question.  10 THE WITNESS: I had no idea whether NexPoint  11 was going to make the payment.  12 Q. (BY MR. RUKAVINA) Were you asked prior to  13 December 31, 2020 by Mr. Seery or anyone else as to  14 whether NexPoint was going to make that payment?  15 A. Was I asked by Mr. Seery? Not that I can  16 remember.  17 Q. Prior to December 31, 2020, do you recall any  18 discussion with Mr. Seery about the NexPoint note?  19 MR. MORRIS: I'm sorry, can I have the  20 question again.  21 Q. (BY MR. RUKAVINA) Prior to December 31,  22 2020, do you recall any discussion that you had with  23 Mr. Seery about this NexPoint note?  24 A. Not that I can remember. If there was, it  25 would have been in a cash meeting, but I don't remember</p>	<p style="text-align: right;">59</p> <p>1 and change payment?  2 A. Yeah, I'm aware that that payment happened.  3 Q. When did you become aware of that payment?  4 A. I think after it happened.  5 Q. Can you tell us, was it days, weeks, months  6 later?  7 A. It was that day. And if I can expand, I  8 recall getting an email, seeing a large inflow to  9 Highland, to MLP because I was on an email distribution  10 list that had those payments.  11 And I think I emailed or called Kristin and  12 asked her, is this the NexPoint note, because it was a  13 large amount of money. And she said yes.  14 Q. Did she tell you anything more about that  15 payment, when it had been made, why, who authorized it?  16 A. I had that information of when it had been  17 sent. I had a wire confirm.  18 Q. Only important thing to you is where did that  19 money come from?  20 A. It wasn't important to me. It was more  21 curiosity.  22 Q. Did you have any discussions with anyone on  23 or about that time, January 14, 2021, as to why  24 NexPoint made that payment?  25 A. Not that I can remember.</p>
<p style="text-align: right;">58</p> <p>1 at all.  2 Q. So it might have been some detail as part of  3 a larger discussion, but you don't remember any  4 specific discussion just around this note?  5 A. No.  6 Q. When did you learn or how did you learn that  7 the December 31 payment had not been made?  8 A. I'm not sure, but certainly after  9 December 31.  10 Q. Do you recall if it was before or after  11 January 7?  12 A. I think it was after.  13 Q. The default letter from Highland is in here,  14 if you need to see it. I'm just telling you it's the  15 January 7.  16 Do you recall having any role with respect to  17 drafting the default letter that went out to NexPoint  18 after the failed payment?  19 A. No, none that I can remember.  20 Q. How do you recall learning that the note had  21 been called by Highland?  22 A. I honestly don't remember. I think after the  23 fact. I couldn't tell you how far after the fact.  24 Q. Are you aware that on or about July -- I'm  25 sorry, January 14, 2021 NexPoint made a \$1.4 million</p>	<p style="text-align: right;">60</p> <p>1 Q. Did you have any discussion with anybody on  2 or about that time, January 14, 2021, as to how HCMLP  3 should account for that payment?  4 A. No.  5 Q. Did you have any discussion with Mr. Seery at  6 all about whether that payment should or shouldn't  7 reinstate the note?  8 A. No discussion that I can remember.  9 Q. Is it fair to say that any of those  10 considerations would have been at that point in time  11 above your paygrade?  12 MR. MORRIS: Objection to the form of the  13 question.  14 THE WITNESS: Yeah, paygrade, I don't know  15 how to respond to that. Like I said before, I wasn't  16 on the team at that point. I wouldn't have been  17 involved in that determination regardless of my  18 compensation.  19 Q. (BY MR. RUKAVINA) So you know and you  20 remember that in early December 2020 Frank Waterhouse  21 told you that Dondero had directed no more payments by  22 the Advisors. And you know that a payment was made on  23 January 14.  24 And that's pretty much the extent of your  25 knowledge about the missed December 31 payment?</p>

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<p style="text-align: right;">61</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yeah, it's a very broad 4 question. In general terms, yes. 5 Q. (BY MR. RUKAVINA) Well, I'm not asking what 6 you learned since then. 7 I'm asking that as of, let's say, January 15, 8 2021 that would have been the extent of what you would 9 have known? 10 A. Correct. And if I can just restate and make 11 sure I understand what I'm saying. 12 It would have been my understanding that we 13 had had an instruction -- when I say "we," Kristin and 14 Frank and by default the whole corporate team -- not to 15 make payments from these affiliated entities. 16 To my knowledge, none of those payments had 17 occurred since that point. And then on or about 18 January 14, such a payment was made and I found out 19 about that by seeing a wire confirm. 20 Q. Well, you mentioned a couple times that you, 21 in December 2020, you weren't part of that group 22 anymore. So do you have any understanding as to why 23 Mr. Waterhouse would have told you in particular, you 24 being Mr. Klos, about that instruction from Dondero? 25 A. Sure. I still was participating in cash</p>	<p style="text-align: right;">63</p> <p>1 Q. Do you remember any discussion at that 2 approximate point in time for your cash meetings or 3 anything else as to whether NexPoint had made any 4 prepayments on the promissory note? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: Yeah, it's very hard to -- by 8 the way, I've said yeah a few times. I want to make 9 clear that that's just -- 10 Q. (BY MR. RUKAVINA) That's not a yes? 11 A. I apologize for that. 12 Q. Understood. Yeah means, it's not a yes. 13 MR. MORRIS: It's a pause; it's an um. 14 Q. (BY MR. RUKAVINA) Germans call it flavoring 15 particle. 16 A. Sorry, I got lost there. If you can ask 17 again. 18 Q. Yeah. Do you recall in November or 19 December 2020 in your weekly meetings or anything else, 20 any discussion whatsoever concerning whether NexPoint 21 had made any prepayments on its note? 22 A. No discussions of whether or not there had 23 been a prepayment that I can remember, no. 24 Q. To the best of your knowledge sitting here 25 today -- strike that.</p>
<p style="text-align: right;">62</p> <p>1 meetings, even if it was almost in a nominal role, 2 because of some of my history that I had. So I was 3 still participating in those meetings. 4 I've worked closely with Kristin for a long 5 time, so I may have caught up with her informally. But 6 as far as day-to-day duties, I wasn't part of that team 7 anymore. 8 Q. And is it your, did I understand you 9 correctly, is it your testimony that Mr. Waterhouse 10 informed the whole accounting group there, the 11 corporate accounting group, of Mr. Dondero's 12 instruction? 13 A. I don't know specifically who he told, if he 14 told every single member of the team, but he certainly 15 told Kristin and Kristin was the head of the team. 16 Q. And you don't recall anyone, after you heard 17 about that instruction, raising any concern to the 18 effect that NexPoint is going to default and be in 19 trouble if that payment isn't made? 20 A. I don't remember any discussion to that 21 effect. 22 Q. Do you remember anyone suggesting that they 23 ought to try to dissuade Mr. Dondero from that 24 direction? 25 A. Not that I can remember.</p>	<p style="text-align: right;">64</p> <p>1 For my next question, again we're assuming 2 that Exhibit 14 is what it appears to be. 3 A. Sure, sure. 4 Q. So with that qualification, to the best of 5 your knowledge, other than what's on Exhibit 14, can 6 you think of any other record or source or document 7 that would address whether any unscheduled payments by 8 NexPoint would or wouldn't be prepayments on the note? 9 MR. MORRIS: Objection to the form of the 10 question. 11 THE WITNESS: Again, with the struggle of the 12 prepayment, this is the document that I would expect to 13 explain how the payment was applied. 14 Q. (BY MR. RUKAVINA) But you yourself did not 15 play any role in deciding how the payment would be 16 applied? 17 A. I'd hesitate to say no role, because the team 18 ultimately rolls up to me. 19 Q. You personally? 20 A. Me personally, I wouldn't have prepared these 21 schedules. 22 Q. Or decided, you personally, as Mr. Klos, how 23 any unscheduled payments should be accounted for by 24 Highland? 25 A. Correct, not without some -- some</p>

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<p style="text-align: right;">65</p> <p>1 authoritative direction on how they should be applied.</p> <p>2 Q. And that authoritative direction would have</p> <p>3 come from Mr. Waterhouse or Mr. Dondero?</p> <p>4 A. That's what I would expect.</p> <p>5 Q. Could it have come from anyone else that you</p> <p>6 can think of here today?</p> <p>7 A. Not that I can think of.</p> <p>8 Q. Now we're going to switch gears and I think</p> <p>9 we're going to stop discussing the NexPoint note, and</p> <p>10 we're going to focus on the HCMFA two promissory notes.</p> <p>11 A. Sure.</p> <p>12 Q. So we're going to go back in time to</p> <p>13 May 2019; okay?</p> <p>14 A. Sure.</p> <p>15 Q. And is it fair to say by -- that by May 2019</p> <p>16 there were at least dozens if not hundreds of instances</p> <p>17 of intercompany loans in the years leading up there</p> <p>18 from Highland to one of the other entities?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: From Highland to one of the</p> <p>22 other entities. Can you help with other entities.</p> <p>23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any</p> <p>24 of the Dondero entities?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">67</p> <p>1 Q. (BY MR. RUKAVINA) Are you familiar with</p> <p>2 Exhibits 1 and 2, sir?</p> <p>3 A. Yes, I am.</p> <p>4 Q. Do you remember them from back -- strike</p> <p>5 that.</p> <p>6 Did you have any role, to your knowledge,</p> <p>7 with the preparation of Exhibits 1 and/or 2?</p> <p>8 A. With the preparation of the documents?</p> <p>9 Q. Yeah.</p> <p>10 A. No.</p> <p>11 Q. But you did have some role with these</p> <p>12 promissory notes?</p> <p>13 A. Yes.</p> <p>14 Q. And I'm trying to find that email as well.</p> <p>15 There's an email here from you. I'll have it in a</p> <p>16 moment. That will help frame the question.</p> <p>17 MR. MORRIS: Exhibit 3.</p> <p>18 Q. (BY MR. RUKAVINA) Do you recall that email,</p> <p>19 sir?</p> <p>20 A. Not specifically, but it's right in front of</p> <p>21 me. I'm certain that I wrote this email.</p> <p>22 Q. You have no reason to deny or reject its</p> <p>23 authenticity?</p> <p>24 A. I have no reason to reject it or question it.</p> <p>25 Q. Just give me a second. I don't understand</p>
<p style="text-align: right;">66</p> <p>1 question.</p> <p>2 THE WITNESS: Yes, there would have been many</p> <p>3 loans over the years.</p> <p>4 Q. (BY MR. RUKAVINA) And do I understand that</p> <p>5 most, if not all, of those loans should have been</p> <p>6 papered up with a written promissory note?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: Should have been. To the</p> <p>10 extent that they were for a promissory note, then yes.</p> <p>11 Q. (BY MR. RUKAVINA) So in the May 2019 time</p> <p>12 frame, was there a regular pattern or course or</p> <p>13 procedure in place as to how a promissory note would be</p> <p>14 physically prepared and presented for approval?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Yeah, when you say a process,</p> <p>18 can you please clarify that for me.</p> <p>19 Q. (BY MR. RUKAVINA) Sure. Let's look at these</p> <p>20 two promissory notes and maybe that will help frame the</p> <p>21 question. And I apologize for not having them right</p> <p>22 here.</p> <p>23 A. It might be --</p> <p>24 MR. MORRIS: 1 and 2.</p> <p>25 MR. RUKAVINA: Yes.</p>	<p style="text-align: right;">68</p> <p>1 what's going on with my exhibits. I just don't</p> <p>2 understand this.</p> <p>3 (Off the record.)</p> <p>4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in</p> <p>5 front of you?</p> <p>6 A. I do.</p> <p>7 Q. And it says, please send 2.4 million from</p> <p>8 HCMLP to HCMFA. This is a new interco.</p> <p>9 Meaning intercompany; right?</p> <p>10 A. Correct.</p> <p>11 Q. This is a new intercompany loan.</p> <p>12 Who told you that this was an intercompany</p> <p>13 loan?</p> <p>14 A. Either Frank or Jim. I would suspect Frank.</p> <p>15 Q. Do you have any present memory of him telling</p> <p>16 you that with respect to this particular loan?</p> <p>17 A. I don't have a specific recollection, but</p> <p>18 with a hundred percent certainty he or Jim would have</p> <p>19 directed that.</p> <p>20 Q. Would they have directed the payment, or</p> <p>21 would they have directed that it be papered as a loan,</p> <p>22 or both?</p> <p>23 A. Both.</p> <p>24 Q. So in each instance -- well, let's take a</p> <p>25 step back.</p>

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<p style="text-align: right;">69</p> <p>1 So certainly either Jim or Frank directed you</p> <p>2 to transfer the \$2.4 million; correct?</p> <p>3 A. Either Jim or Frank would have directed, yes.</p> <p>4 There's 0 percent chance I would have sent this email</p> <p>5 if I didn't feel a hundred percent confident that this</p> <p>6 was authorized in the way that I described in the</p> <p>7 email.</p> <p>8 Q. But can you also say with certainty that</p> <p>9 either Dondero or Waterhouse also told you that this</p> <p>10 transfer is an intercompany loan?</p> <p>11 A. With a hundred percent certainty, yes. I</p> <p>12 can't say that necessarily with respect to Dondero,</p> <p>13 because I don't remember if I would have talked to him</p> <p>14 specifically about it. But, yes, this would have been</p> <p>15 clear that it's a loan.</p> <p>16 Q. You say clear. Did someone tell you that</p> <p>17 it's a loan, or are you just, because of the prior</p> <p>18 10 years of course and conduct, logically deciding that</p> <p>19 it has to be a loan?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: So this is -- this is not just</p> <p>23 a situation of past practice. I would have known with</p> <p>24 certainty that this was a loan and that's what was</p> <p>25 authorized.</p>	<p style="text-align: right;">71</p> <p>1 within that fund.</p> <p>2 Q. Who made that NAV error?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Yeah, it's hard to answer that.</p> <p>6 So the Highland Capital Management Fund Advisors is the</p> <p>7 advisor to the fund, so they're the responsible party</p> <p>8 for making the fund whole in the instances of NAV</p> <p>9 errors.</p> <p>10 Q. (BY MR. RUKAVINA) And did HCMFA contract out</p> <p>11 with Highland for valuation services?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I don't specifically remember</p> <p>15 if they contracted for valuation services, but if you</p> <p>16 tell me that they did, I'll take that at face value.</p> <p>17 So yes, HCMFA utilized HCMLP for valuation services.</p> <p>18 Q. (BY MR. RUKAVINA) Do you have any memory of</p> <p>19 what human being or beings made that NAV error?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: It's -- in respect to people,</p> <p>23 not particularly. In respect to parties, Houlihan</p> <p>24 Lokey was the service provider that performed the</p> <p>25 valuation that resulted in the NAV error.</p>
<p style="text-align: right;">70</p> <p>1 Q. (BY MR. RUKAVINA) How would you have known</p> <p>2 with certainty that it was a loan?</p> <p>3 A. I'll say in part because of past practice,</p> <p>4 but also because of the nature of what the money was</p> <p>5 going to be used for, and the background behind it.</p> <p>6 Q. So you knew that nature and that background?</p> <p>7 A. The nature and background of the 2.4 million,</p> <p>8 yes.</p> <p>9 Q. So you've told me that in part -- I asked you</p> <p>10 how did you know it was a loan. You said in part past</p> <p>11 practices, in part you knew the nature. Anything else?</p> <p>12 A. I'm certain that given that I wrote this</p> <p>13 email, which Frank is on, that I would have had a</p> <p>14 conversation with Frank about what this was.</p> <p>15 Q. Was Jim Dondero in the corporate accounting</p> <p>16 email?</p> <p>17 A. No, he wasn't.</p> <p>18 Q. So what is your understanding as to what this</p> <p>19 \$2.4 million was for?</p> <p>20 A. This related to -- well, to separate the</p> <p>21 transaction, the 2.4- itself relates to a promissory</p> <p>22 note. That's what was executed.</p> <p>23 HCMFA's use of the 2.4 million was to</p> <p>24 reimburse a fund that it managed called Highland Global</p> <p>25 Allocation Fund for a NAV error that had occurred</p>	<p style="text-align: right;">72</p> <p>1 And as I described before, the valuation</p> <p>2 function was housed at HCMLP by HCMLP employees</p> <p>3 supporting that through, among other people, front</p> <p>4 office, compliance, other parts of the organization as</p> <p>5 well.</p> <p>6 Q. (BY MR. RUKAVINA) So it was your</p> <p>7 understanding that Highland was loaning \$2.4 million to</p> <p>8 HCMFA for HCMFA to compensate that fund?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have any understanding that Highland</p> <p>11 might have been, instead of loaning that money,</p> <p>12 actually paying that money to HCMFA to compensate HCMFA</p> <p>13 for Highland's valuation error?</p> <p>14 A. First, not Highland's valuation error. But</p> <p>15 second, no, there's no way that that would have been</p> <p>16 what that payment was for.</p> <p>17 Q. Why can you say that there's no way that that</p> <p>18 would have been what that payment was for?</p> <p>19 A. First, this wasn't the first NAV error that</p> <p>20 ever occurred. There had been other NAV errors. There</p> <p>21 were other NAV errors with respect to this valuation</p> <p>22 that pertain to NexPoint Advisors.</p> <p>23 There was no reimbursement from HCMLP to</p> <p>24 NexPoint or HCMFA, regardless of any individual being</p> <p>25 identified as the person. That had just never occurred</p>



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<p style="text-align: right;">73</p> <p>1 to my knowledge.</p> <p>2 Second, the amount was to meet the liquidity</p> <p>3 need of HCMFA. It wasn't to -- it wasn't to</p> <p>4 dollar-for-dollar make up for the NAV error. It was</p> <p>5 that's how much money HCMFA needed.</p> <p>6 Third, it was definitely Dondero's practice</p> <p>7 and preference to have expenses at HCMFA for tax</p> <p>8 purposes. So if this was compensation, he would</p> <p>9 ultimately not really be benefiting from the deduction</p> <p>10 so.</p> <p>11 That would have been a strong preference of</p> <p>12 his against having it be compensation.</p> <p>13 So it would have been excruciatingly clear</p> <p>14 that this was a loan for liquidity for HCMFA to make</p> <p>15 the fund whole, just like it had in the past NAV</p> <p>16 errors.</p> <p>17 Q. How did you know that HCMFA needed</p> <p>18 \$2.4 million for liquidity?</p> <p>19 A. At that point I was still part of the</p> <p>20 corporate team, so I had a good sense of how much cash</p> <p>21 HCMFA would have had at any given moment. And at that</p> <p>22 given moment it would not have had -- I'd be shocked if</p> <p>23 it had even 2.4-.</p> <p>24 Probably would have had probably between</p> <p>25 a million and 2 million if I had to speculate.</p>	<p style="text-align: right;">75</p> <p>1 HCMFA for the liquidity. HCMFA made the payment to the</p> <p>2 fund. It wasn't dollar for dollar. I think it was</p> <p>3 like 5,019,000, or some such number.</p> <p>4 But 5 million was the number that would allow</p> <p>5 it to make that payment effectively to the investors of</p> <p>6 Global Allocation Fund.</p> <p>7 Q. Do you have any understanding as to why</p> <p>8 Highland, as opposed to some other entity, was</p> <p>9 transferring \$7.4 million?</p> <p>10 A. Highland as opposed to some other entity?</p> <p>11 Q. Uh-huh.</p> <p>12 A. Because Highland had the money.</p> <p>13 Q. But I think we've established earlier that in</p> <p>14 the first seven months of 2019, Highland was having</p> <p>15 constant liquidity issues?</p> <p>16 A. It was.</p> <p>17 Q. And that's part of the reason that NexPoint</p> <p>18 was making unscheduled payments on its note; right?</p> <p>19 A. That's part of the reason NexPoint was making</p> <p>20 unscheduled payments on its note, yes.</p> <p>21 Q. So your recollection is that HCMFA needed</p> <p>22 \$2.4 million for liquidity purposes and about</p> <p>23 \$5 million for the consent fee. And Highland</p> <p>24 transferred those funds because Highland had the funds?</p> <p>25 A. Yes. And I should clarify that Highland only</p>
<p style="text-align: right;">74</p> <p>1 Q. Okay. So you've given the reasons why this</p> <p>2 was clearly a loan.</p> <p>3 But you never heard Mr. Dondero say that this</p> <p>4 was a loan, did you?</p> <p>5 A. I don't remember. It's possible I did, but I</p> <p>6 don't specifically remember.</p> <p>7 Q. Okay. What about the \$5 million loan on the</p> <p>8 day after? What was that \$5 million for?</p> <p>9 A. That was similar but different. So again,</p> <p>10 HCMFA needed liquidity. This time this was for --</p> <p>11 related to that same fund.</p> <p>12 So Highland Global Allocation Fund had</p> <p>13 converted from an open-end fund, mutual fund, to a</p> <p>14 closed-end mutual fund.</p> <p>15 And pursuant to that conversion there was a,</p> <p>16 I believe it was called a consent fee, for any</p> <p>17 investors of that fund who consented to the conversion,</p> <p>18 that they would receive a 3 percent fee payable by the</p> <p>19 investment advisor.</p> <p>20 And so at this time the bill came due on that</p> <p>21 because the conversion had been completed, and the</p> <p>22 accounting for how much that 3 percent was going to be</p> <p>23 was complete.</p> <p>24 HCMFA sure as hell didn't have 5 million</p> <p>25 bucks. Excuse my language. Highland needed to pay</p>	<p style="text-align: right;">76</p> <p>1 had the funds because Mr. Dondero repaid personal notes</p> <p>2 to HCMLP on the same days.</p> <p>3 So he paid 2.4 million on May 2, which</p> <p>4 Highland turned around and reloaned. And he paid 4.4-</p> <p>5 on May 3, and Highland sent out 5-, so there's a</p> <p>6 \$600,000 difference. And my recollection, he paid the</p> <p>7 other 600,000 via note repayment within a few days.</p> <p>8 Q. So this would have been part of some broader</p> <p>9 transaction in Mr. Dondero's mind?</p> <p>10 A. I would not characterize it that way.</p> <p>11 Q. You established that HCMFA needed money. You</p> <p>12 established that Highland temporarily had money because</p> <p>13 Dondero provided it with money.</p> <p>14 But you still don't know, sir, as a fact as</p> <p>15 to whether that transfer was a loan or some other</p> <p>16 payment from HCMFA -- I'm sorry from HCM, from debtor</p> <p>17 to HCMFA?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question. Asked and answered a million times. It's in</p> <p>20 the documents you're showing him.</p> <p>21 THE WITNESS: It was a loan.</p> <p>22 MR. MORRIS: Come on, Davor. With all due</p> <p>23 respect, it's in the document. It's on the document.</p> <p>24 Q. (BY MR. RUKAVINA) I'm being courteous and</p> <p>25 respectful to you and I'd ask the same in return; okay?</p>



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<p style="text-align: right;">77</p> <p>1 A. Absolutely. I apologize if I haven't been.</p> <p>2 Q. Mr. Dondero, would you agree, was the only</p> <p>3 person that had the authority at the debtor to</p> <p>4 authorize a transfer of 2.4- and then \$5 million?</p> <p>5 A. At the debtor?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question.</p> <p>8 Q. (BY MR. RUKAVINA) Yes, at the debtor.</p> <p>9 A. No.</p> <p>10 Q. Who else could have transferred 2.4 million</p> <p>11 or \$5 million?</p> <p>12 A. Those are two different questions. But if</p> <p>13 you're asking who had the authority, certainly Frank</p> <p>14 did as well.</p> <p>15 Q. So Frank had the authority. Perhaps my</p> <p>16 question was inartful.</p> <p>17 Do you believe that Mr. Waterhouse would have</p> <p>18 decided to transfer \$2.4 million or \$5 million without</p> <p>19 Mr. Dondero's approval?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Generally speaking, no, but I</p> <p>23 don't know exactly what the form of the approval. But</p> <p>24 he certainly wouldn't have done that on his own without</p> <p>25 discussing with Dondero.</p>	<p style="text-align: right;">79</p> <p>1 into the note on behalf of HCMFA, yes.</p> <p>2 Q. (BY MR. RUKAVINA) Was that something that he</p> <p>3 would have done without Mr. Dondero's approval to your</p> <p>4 understanding and practice at that time?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Same answer that I gave before</p> <p>8 with respect to Highland.</p> <p>9 Q. (BY MR. RUKAVINA) So here's where I'm going</p> <p>10 with all this.</p> <p>11 Mr. Dondero's position, and tomorrow his</p> <p>12 testimony will be, that he caused the \$7.4 million to</p> <p>13 be transferred not as a loan to HCMFA, but to</p> <p>14 compensate HCMFA for various things including that NAV</p> <p>15 error.</p> <p>16 Other than perhaps you think he's lying,</p> <p>17 would you have any knowledge, hearsay, document,</p> <p>18 anything, to contradict Mr. Dondero's position?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Yes. I would point to the fact</p> <p>22 that as it pertains to the \$5 million note, if we're</p> <p>23 separating issues, there's no other possibility of what</p> <p>24 that money could be other than either a loan or equity.</p> <p>25 It's not compensation. Highland is under --</p>
<p style="text-align: right;">78</p> <p>1 Q. (BY MR. RUKAVINA) Do you believe that</p> <p>2 Mr. Waterhouse had the ability on behalf of the debtor</p> <p>3 to loan \$5 million without Mr. Dondero's approval?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I think he had the technical</p> <p>7 authority to. However, I don't believe in practice</p> <p>8 that he ever would.</p> <p>9 Q. (BY MR. RUKAVINA) Same question, \$2.4</p> <p>10 million?</p> <p>11 A. Same answer.</p> <p>12 Q. We've established that you never really had a</p> <p>13 direct employment or types of a role for NexPoint --</p> <p>14 I'm sorry, for HCMFA; right?</p> <p>15 A. Again --</p> <p>16 Q. To the best of your recollection?</p> <p>17 A. Best of my recollection I can't remember how</p> <p>18 the titles transferred over or whatever, but I don't</p> <p>19 believe I did.</p> <p>20 Q. Do you know whether Mr. Waterhouse in 2019</p> <p>21 had the authority, without Mr. Dondero's approval, to</p> <p>22 borrow \$7.4 million on behalf of HCMFA?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: He had the authority to enter</p>	<p style="text-align: right;">80</p> <p>1 HCMLP has absolutely zero obligation in respect to that</p> <p>2 consent fee. So when Highland sends \$5 million to HCMFA</p> <p>3 there's nothing else that it can be. That's Point 1.</p> <p>4 Point 2, we're right in the middle of an audit</p> <p>5 at this point. Jim signs rep letters at this point.</p> <p>6 He's being provided balance sheets throughout 2019 that</p> <p>7 indicate the loans that Highland has on its books.</p> <p>8 Balance sheets are being prepared in respect</p> <p>9 of annual approvals for 15(c) for retail funds in the</p> <p>10 fall. Schedules are being created for bankruptcy after</p> <p>11 we file in October.</p> <p>12 Nobody says this is a mistake. Frank is on</p> <p>13 all of these emails. Frank never questions it.</p> <p>14 There's absolutely no evidence from that point</p> <p>15 in time to whenever this defense got raised that would</p> <p>16 indicate that anybody said that these weren't exactly</p> <p>17 what they say they are.</p> <p>18 Q. (BY MR. RUKAVINA) Are you aware that in</p> <p>19 February or March 2019 some \$5.2 million was paid from</p> <p>20 insurance that HCMFA had to the fund for the NAV error?</p> <p>21 A. The amount sounds unfamiliar, but I'm aware</p> <p>22 that insurance proceeds were paid from HCMFA to the</p> <p>23 fund.</p> <p>24 Q. And do you think that it's impossible for a</p> <p>25 sane, rational person to conclude that HCMFA had a</p>

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<p style="text-align: right;">81</p> <p>1 claim against the debtor related to that NAV error?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: If it did, I don't know how</p> <p>5 that's not insurance fraud for basically double</p> <p>6 collecting insurance proceeds and then collecting it</p> <p>7 again.</p> <p>8 Q. (BY MR. RUKAVINA) So you believe, sir, that</p> <p>9 if insurance pays a claim you have no more right to go</p> <p>10 against a person who caused the fault?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: We can speak specifically here.</p> <p>14 This is about a NAV error that an insurance company</p> <p>15 reimbursed HCMFA for, which it then turned around and</p> <p>16 paid for the fund.</p> <p>17 So if it went to collect that same, let's use</p> <p>18 round numbers, \$5 million from Highland that it's</p> <p>19 already collected from insurance, that sounds</p> <p>20 inappropriate to me.</p> <p>21 Q. (BY MR. RUKAVINA) Okay. But you don't know</p> <p>22 whether that's allowed in Texas law or not, do you?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: No, I don't know whether it's</p>	<p style="text-align: right;">83</p> <p>1 A. Yes, I am. I believe Kristin sent that one.</p> <p>2 Q. Kristin sent that one?</p> <p>3 A. I believe so.</p> <p>4 Q. To whom?</p> <p>5 A. Likely the same distribution group, but</p> <p>6 that's speculation.</p> <p>7 Q. Did you see such an email in the last week or</p> <p>8 two?</p> <p>9 A. I'm not certain, but probably. I have seen</p> <p>10 email communication on or around May 3, but I don't</p> <p>11 know specifically who all was on the email. I'm going</p> <p>12 off what I would expect to see.</p> <p>13 MR. MORRIS: If you're really interested,</p> <p>14 it's right here. It was produced to you with</p> <p>15 Bates 3763. And if you'd like to question the witness.</p> <p>16 MR. RUKAVINA: When was it produced?</p> <p>17 MR. MORRIS: I can't tell you. It's part of</p> <p>18 the same package.</p> <p>19 Q. (BY MR. RUKAVINA) So going back to this</p> <p>20 Exhibit 3, sir, why did you ask Kristin, can you or</p> <p>21 Hayley please prep a note for execution? Why them?</p> <p>22 Remember, I was asking about what the course</p> <p>23 or procedure was at that point in time.</p> <p>24 A. Yeah, so nomenclature, procedure, process.</p> <p>25 I would say the informal process for these</p>
<p style="text-align: right;">82</p> <p>1 allowed under Texas law.</p> <p>2 Q. (BY MR. RUKAVINA) So you don't know that if</p> <p>3 you're hit by someone on the street and your medical</p> <p>4 insurance pays your bills, you don't know that he still</p> <p>5 has to pay you for the same bills?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question. I hope I don't miss my plane.</p> <p>8 Q. (BY MR. RUKAVINA) You don't know that under</p> <p>9 Texas law if someone hits you with their car and causes</p> <p>10 you medical bills and your medical insurance pays those</p> <p>11 bills, that you can still sue them for the same</p> <p>12 damages?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I'm not familiar at any level</p> <p>16 of specificity with Texas law.</p> <p>17 Q. (BY MR. RUKAVINA) Again, it just sounds</p> <p>18 wrong to you that you could go after someone after</p> <p>19 insurance pays, but you don't know legally one way or</p> <p>20 the other?</p> <p>21 A. Correct. I'm not a lawyer or expert in Texas</p> <p>22 law. It feels wrong, yes.</p> <p>23 Q. Okay. Going back to this email of yours,</p> <p>24 Exhibit 3, do you recall whether there was a similar</p> <p>25 email with respect to the \$5 million note?</p>	<p style="text-align: right;">84</p> <p>1 types of loans, they were frequent in nature, would be</p> <p>2 for someone on the corporate accounting team to prepare</p> <p>3 a note and have it executed.</p> <p>4 Q. Okay. That was the standard course back</p> <p>5 then?</p> <p>6 A. Again, I don't know what standard course</p> <p>7 means. That was fairly typical.</p> <p>8 Q. Why would you not have asked someone in the</p> <p>9 Highland legal department to prepare a note?</p> <p>10 A. Because this was a legally reviewed document</p> <p>11 as far as the form of the agreement. It's a one-page,</p> <p>12 two-paragraph form that had been used for a long time.</p> <p>13 So the only thing that would change with</p> <p>14 respect to these notes would be the date, the amount,</p> <p>15 likely the rate. I can't think of anything else</p> <p>16 offhand that would have changed from note to note.</p> <p>17 Q. After you asked Ms. Hendrix to prepare this</p> <p>18 note, did you have any further role with respect to the</p> <p>19 papering, preparation, or execution of that note?</p> <p>20 A. Not that I can remember.</p> <p>21 Q. Would you have had any role in having either</p> <p>22 or both of the notes actually signed electronically or</p> <p>23 by ink by Mr. Waterhouse?</p> <p>24 A. Likely not, no.</p> <p>25 Q. Do you know who decided to have</p>

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<p style="text-align: right;">85</p> <p>1 Mr. Waterhouse as opposed to Mr. Dondero sign these two</p> <p>2 promissory notes?</p> <p>3 A. I don't.</p> <p>4 Q. On the \$5 million note, do you remember if</p> <p>5 you had any role with respect to its physical papering</p> <p>6 or execution?</p> <p>7 A. Not that I recall.</p> <p>8 Q. To the best of your memory, your role would</p> <p>9 have been done by instructing your team, hey, here is</p> <p>10 these new loans, go paper it up; is that accurate?</p> <p>11 A. On the upfront side. I suppose my role would</p> <p>12 have also included on the back end making sure that the</p> <p>13 actual payment had occurred. But that would have been</p> <p>14 doing that realtime, seeing the funds went out, and</p> <p>15 that, most importantly, that the consent fee had been</p> <p>16 paid from HCMFA to the transfer agent.</p> <p>17 Q. How did you or anyone on your team know -- so</p> <p>18 obviously, you know it's a \$2.4 million loan because</p> <p>19 that's what Waterhouse or Dondero told you; right?</p> <p>20 How did you know it was a \$2.4 million loan?</p> <p>21 MR. MORRIS: Objection. Asked and answered.</p> <p>22 THE WITNESS: I knew that the NAV error was</p> <p>23 2 million, I think it was 398,000, somewhere in that</p> <p>24 ballpark. And that 2.4- had been authorized for that</p> <p>25 purpose.</p>	<p style="text-align: right;">87</p> <p>1 Q. Did you have any understanding in early May</p> <p>2 of 2019 as to whether HCMFA was solvent or insolvent?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Whether HCMFA was solvent or</p> <p>6 insolvent? I'm not a solvency expert, so I don't know</p> <p>7 that I could even attempt to answer that.</p> <p>8 Q. (BY MR. RUKAVINA) Did you have an</p> <p>9 understanding as far as HCMFA goes on May 2, 2019, that</p> <p>10 its liabilities exceeded its assets?</p> <p>11 A. I don't remember specifically where it stood</p> <p>12 on assets versus liabilities.</p> <p>13 Q. Do you have any memory that by May 2, 2019,</p> <p>14 the debtor had taken a couple prior demand notes from</p> <p>15 HCMFA and made them not collectible prior to May 31,</p> <p>16 2021?</p> <p>17 A. I know what you're referring to. I wouldn't</p> <p>18 characterize it that way.</p> <p>19 Q. How would you characterize it?</p> <p>20 A. I recall that there was a financial support</p> <p>21 acknowledgment, I think it was the name of the</p> <p>22 acknowledgment.</p> <p>23 That described -- I can't remember if it</p> <p>24 described those two notes specifically or just referred</p> <p>25 to them, that there would not be collection sought on</p>
<p style="text-align: right;">86</p> <p>1 Q. (BY MR. RUKAVINA) Do you know who decided</p> <p>2 what the interest rate in this note would be, or that</p> <p>3 it would be a demand note as opposed to a term note?</p> <p>4 A. I don't specifically know who made that</p> <p>5 decision. However, the common practice for fund</p> <p>6 advisors was to put -- was for the rate to equal the, I</p> <p>7 forget if it was the short-term or long-term AFR.</p> <p>8 And for the note to be demand, that was just</p> <p>9 the standard -- that was the standard.</p> <p>10 Q. And I think I asked this, but just if I</p> <p>11 didn't.</p> <p>12 For either or both of these two notes, the</p> <p>13 2.4- and \$5 million note, did you have any role with</p> <p>14 respect to Mr. Waterhouse signing them?</p> <p>15 A. No, not that I can remember. I don't think I</p> <p>16 did.</p> <p>17 Q. And you don't remember doing anything to get</p> <p>18 his signatures?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Nor would that have been something that you</p> <p>21 would expect that you would have a role with?</p> <p>22 A. Certainly not in this instance. Maybe to the</p> <p>23 extent that nobody else was around and it was time</p> <p>24 sensitive, but that wouldn't have been the case with</p> <p>25 these, I don't believe.</p>	<p style="text-align: right;">88</p> <p>1 those until May 31 of 2021.</p> <p>2 Q. Do you remember why that document was done?</p> <p>3 A. My recollection, and it could have been done</p> <p>4 for other reasons, but my recollection of it was that</p> <p>5 it was primarily audit-driven.</p> <p>6 For the auditors to be comfortable that these</p> <p>7 notes weren't going to be just called and FA not have</p> <p>8 the ability to pay them right away.</p> <p>9 Q. Because it's true in April or May of 2019</p> <p>10 HCMFA didn't have the ability to pay those notes;</p> <p>11 correct?</p> <p>12 A. It didn't have enough cash to pay those.</p> <p>13 Q. And I think you mentioned before that in</p> <p>14 May 2019 the auditors at the Highland level were</p> <p>15 talking about rolling up prior demand notes into term</p> <p>16 notes so the debtor would at least get some regular</p> <p>17 cash flow; correct?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. RUKAVINA) So you recall that -- I'm</p> <p>22 sorry, that was 2017. I was wrong; right?</p> <p>23 A. Correct.</p> <p>24 Q. So I guess here is my question, and I'm</p> <p>25 struggling to understand this.</p>

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<p style="text-align: right;">89</p> <p>1 So why would Highland be loaning an</p> <p>2 additional \$7.4 million in early May of 2019 to HCMFA</p> <p>3 when HCMFA already was then unable to repay its debts</p> <p>4 to Highland?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Yeah, I kind of reject the</p> <p>8 premise of the question, and these are all controlled</p> <p>9 by Jim. And it's completely within his power at any</p> <p>10 point in time to make any payment on any of the loans,</p> <p>11 depending on where priorities sit.</p> <p>12 So the idea that HCMFA -- that Highland would</p> <p>13 be doing a credit analysis on HCMFA, determining that it</p> <p>14 was unable to make that payment and, therefore, this is</p> <p>15 a bad note, is a completely foreign, preposterous</p> <p>16 concept at that time.</p> <p>17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't</p> <p>18 it also, sir, the case that Mr. Dondero could have,</p> <p>19 right or wrong, agree or disagree, said, that 7.4- is</p> <p>20 going to compensate HCMFA for the NAV error as opposed</p> <p>21 to being a loan?</p> <p>22 A. No.</p> <p>23 Q. That's not possible?</p> <p>24 A. No.</p> <p>25 Q. And why is that not possible?</p>	<p style="text-align: right;">91</p> <p>1 Q. (BY MR. RUKAVINA) So it had to have been a</p> <p>2 loan; correct?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: In these instances I know it to</p> <p>6 have been a loan.</p> <p>7 Q. (BY MR. RUKAVINA) Because of what</p> <p>8 Mr. Waterhouse told you?</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question. Asked and answered.</p> <p>11 THE WITNESS: Yeah, it was my understanding</p> <p>12 that these were loans.</p> <p>13 Q. (BY MR. RUKAVINA) You know these 7.4- to be</p> <p>14 loans even though you never heard Mr. Dondero say that</p> <p>15 to you?</p> <p>16 A. Yes, although to be fair, I don't know</p> <p>17 whether I ever heard Mr. Dondero. It's possible he did</p> <p>18 say it.</p> <p>19 MR. MORRIS: Objection. Withdrawn.</p> <p>20 Q. (BY MR. RUKAVINA) You have no memory that on</p> <p>21 or before May 4, 2019 you heard Mr. Dondero say that</p> <p>22 the \$2.4 million transfer and/or the \$5 million</p> <p>23 transfer to HCMFA were loans?</p> <p>24 A. I have no specific recollection, but such a</p> <p>25 conversation is just off the reservation impossible.</p>
<p style="text-align: right;">90</p> <p>1 A. As we discussed, the 5-, there's absolutely</p> <p>2 no construct where that can be compensation for an NAV</p> <p>3 error. It's not a NAV error. It's a consent fee.</p> <p>4 Highland has absolutely no responsibility for that.</p> <p>5 Highland also has no responsibility for the</p> <p>6 2.4-, but if you want to assume that it did, that's</p> <p>7 completely not the practice. It was Jim's preference</p> <p>8 to do these via loans, and that's how it was booked.</p> <p>9 Q. You're saying on the one hand Mr. Dondero can</p> <p>10 absolutely control that one entity make a loan to</p> <p>11 another, irrespective of credit worthiness, but he</p> <p>12 can't decide that a transfer is compensation as opposed</p> <p>13 to a loan?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question. Argumentative.</p> <p>16 THE WITNESS: If he wants to call</p> <p>17 \$7.4 million compensation to himself or to HCMFA, I</p> <p>18 just don't know how he does that. This is me being an</p> <p>19 accountant. I don't know how that's possible.</p> <p>20 If he wants to pay himself a \$7.4 million</p> <p>21 bonus from HCMFA, fine, he has the power to do that. If</p> <p>22 he wants Highland to inject 7.4 million of equity into</p> <p>23 HCMFA, he has the power to do that.</p> <p>24 But sending the 7.4 million and calling it</p> <p>25 something else, I don't know how he could do that.</p>	<p style="text-align: right;">92</p> <p>1 That there's no way -- there's no way -- there's no way</p> <p>2 that it would have been described that way and there's</p> <p>3 a hundred percent that it's loan.</p> <p>4 Q. Do you have any memory discussing prior --</p> <p>5 MR. MORRIS: Objection. Asked and answered.</p> <p>6 He's answered this a thousand times.</p> <p>7 Q. (BY MR. RUKAVINA) Do you have any memory on</p> <p>8 or before May 2, 2019 discussing the \$2.4 million</p> <p>9 transfer with Mr. Dondero at all?</p> <p>10 A. I do recall, I don't remember the time, but I</p> <p>11 do remember discussing the NAV error in general terms</p> <p>12 and the potential magnitude of that. I don't remember</p> <p>13 specifically when that occurred.</p> <p>14 Q. At least in your discussion with Mr. Dondero,</p> <p>15 the \$2.4 million loan or note was somehow linked to the</p> <p>16 NAV error?</p> <p>17 A. Linked to the NAV error is strong. It</p> <p>18 related to the NAV error from the standpoint that</p> <p>19 that's what Highland was loaning HCMFA the money for,</p> <p>20 because HCMFA couldn't otherwise make the payment</p> <p>21 itself.</p> <p>22 Q. You just said Highland was loaning the money</p> <p>23 for. Are you remembering now Mr. Dondero saying that</p> <p>24 or are you just extrapolating?</p> <p>25 A. No, I'm explaining rationally what the</p>



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<p style="text-align: right;">93</p> <p>1 situation was.</p> <p>2 Q. Do you remember on or before May 3, 2019</p> <p>3 discussing the \$5 million transfer with Mr. Dondero?</p> <p>4 A. Again, in general terms. I couldn't tell you</p> <p>5 a time period, but this was something that, between</p> <p>6 Frank and I, we had put on Jim's radar that this would</p> <p>7 be a cash need in the future. I couldn't specify</p> <p>8 specifically when that happened.</p> <p>9 Q. Okay. You have no present memory of</p> <p>10 discussing that issue with Mr. Dondero on or before</p> <p>11 May 3, 2019? It must have happened but you have no</p> <p>12 memory?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: We discussed that there would</p> <p>16 be a consent fee payable from HCMFA. We would have</p> <p>17 discussed -- and again, I don't remember where I was,</p> <p>18 what day it was, the specifics around the conversation.</p> <p>19 But I know that we had conversations</p> <p>20 pertaining to cash, because this was a large need for --</p> <p>21 cash need for HCMFA to satisfy this, and this was an</p> <p>22 important payment.</p> <p>23 And neither HCMFA nor Highland had the</p> <p>24 wherewithal to make that payment. The only way that</p> <p>25 those could make the payment was by Jim Dondero repaying</p>	<p style="text-align: right;">95</p> <p>1 Q. So it's possible that Mr. Dondero told no one</p> <p>2 that these were loans but because y'all have been doing</p> <p>3 it this way for 10 years, that everyone, all of you</p> <p>4 CPAs, understood that it had to be a loan?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 Q. (BY MR. RUKAVINA) My question is, is that</p> <p>8 possible?</p> <p>9 A. I really don't think it's possible. I</p> <p>10 suppose people say anything is possible. Again, two</p> <p>11 and a half years ago, I'm certain that that was the</p> <p>12 intent at the time and I'm sure it was communicated as</p> <p>13 such. I just don't have a specific recollection.</p> <p>14 MR. RUKAVINA: Thank you.</p> <p>15 I'll pass the witness.</p> <p>16 MR. MORRIS: Michael, do you have any</p> <p>17 questions?</p> <p>18 MR. AIGEN: I do. I assume you want me to</p> <p>19 start now to do my best to be done at 5:00?</p> <p>20 MR. MORRIS: Yes, please.</p> <p>21 EXAMINATION</p> <p>22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My</p> <p>23 name is Michael Aigen with the Stinson law firm. I</p> <p>24 represent Mr. Dondero, HCMS, and HCRE.</p> <p>25 How are you today?</p>
<p style="text-align: right;">94</p> <p>1 loans that he owed to HCMLP. So we absolutely discussed</p> <p>2 that with Jim Dondero.</p> <p>3 Q. (BY MR. RUKAVINA) And with respect to</p> <p>4 everything that we just talked about and your</p> <p>5 recollection, you still don't remember Mr. Dondero</p> <p>6 saying to you or Mr. Waterhouse one way or the other</p> <p>7 that one or both of these transfers were loans?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question. Asked and answered.</p> <p>10 THE WITNESS: Yeah, again --</p> <p>11 Q. (BY MR. RUKAVINA) Just yes or no. This is a</p> <p>12 yes-or-no question.</p> <p>13 MR. MORRIS: Let him answer the question.</p> <p>14 MR. RUKAVINA: If he'll answer the question</p> <p>15 I'll stop asking him --</p> <p>16 MR. MORRIS: He's allowed --</p> <p>17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,</p> <p>18 do you remember --</p> <p>19 A. I don't remember Jim's exact words two and a</p> <p>20 half years ago in respect to authorizing these</p> <p>21 payments. So to answer your question, no, I don't</p> <p>22 specifically remember him saying these are loans.</p> <p>23 But every other fact around this tells me</p> <p>24 that we did have that conversation and that was the</p> <p>25 conclusion and that was the direction.</p>	<p style="text-align: right;">96</p> <p>1 A. I'm very good, thank you.</p> <p>2 Q. First topic I wanted to ask you about is the</p> <p>3 defense raised by some of the defendants related to an</p> <p>4 oral agreement and condition subsequent.</p> <p>5 So my question for you generally is, are you</p> <p>6 aware that some of the defendants in these proceedings</p> <p>7 have raised a defense that there was a subsequent oral</p> <p>8 agreement allowing notes to be potentially forgiven if</p> <p>9 certain events occur?</p> <p>10 A. Yeah, I'm generally aware of the defenses</p> <p>11 sitting here today.</p> <p>12 Q. And how are you generally aware of this</p> <p>13 defense?</p> <p>14 A. I don't know with specificity. Potentially</p> <p>15 through just document flow on the bankruptcy side,</p> <p>16 potentially with conversations internally or with</p> <p>17 counsel. But I generally understand them to have been</p> <p>18 raised, the defenses that is.</p> <p>19 Q. And I don't want to get into conversations</p> <p>20 with counsel. I'm not allowed to do that.</p> <p>21 Let me ask you, have you had any</p> <p>22 conversations with anyone other than counsel about this</p> <p>23 subsequent oral agreement defense?</p> <p>24 A. I have had general conversations with</p> <p>25 Mr. Seery about it. And other than that, nothing</p>

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<p style="text-align: right;">97</p> <p>1 substantive.</p> <p>2 Q. And what did you discuss about this with</p> <p>3 Mr. Seery?</p> <p>4 A. I've discussed with him, I hate to phrase it</p> <p>5 this way, the ridiculousness of the defense. Under</p> <p>6 oath. I've discussed my general understanding of what</p> <p>7 is being asserted as a defense.</p> <p>8 Which is that there was some sort of an oral</p> <p>9 agreement between Jim and his sister at some point in</p> <p>10 the past pertaining to forgiveness of certain</p> <p>11 promissory notes that was conditional upon Highland</p> <p>12 monetizing any of three PE assets for any amount above</p> <p>13 cost.</p> <p>14 Q. And is it fair to say that prior to these</p> <p>15 lawsuits being brought, you weren't aware of any oral</p> <p>16 agreements related to the promissory notes related to</p> <p>17 potential forgiveness?</p> <p>18 A. That's correct. Not that I can remember, and</p> <p>19 I think I would remember.</p> <p>20 Q. And other than your conversations with</p> <p>21 Mr. Seery and counsel, you haven't had any</p> <p>22 conversations with anyone else about these alleged oral</p> <p>23 agreements; is that fair to say?</p> <p>24 A. I'm not sure I understand the question.</p> <p>25 Q. You told me you may have had questions with</p>	<p style="text-align: right;">99</p> <p>1 Q. Is it fair to say that if those payments were</p> <p>2 to be made, it would have been Ms. Hendrix that would</p> <p>3 have gone and effectuated those payments?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: Can you remind me the entities</p> <p>7 again.</p> <p>8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE</p> <p>9 Partners.</p> <p>10 A. HCMS, yes. HCRE, I'm not sure, maybe.</p> <p>11 Q. Why might it have been different?</p> <p>12 A. I just don't recall who had the, you know,</p> <p>13 kind of bank access to effectuate that payment. I</p> <p>14 think Kristin did but I'm not certain.</p> <p>15 Q. It wouldn't have been you; is that fair to</p> <p>16 say?</p> <p>17 A. Correct. It would not have been me.</p> <p>18 Q. And if Ms. Hendrix testified that the</p> <p>19 instruction she received in December 2020 about not</p> <p>20 making payments related only to the Advisors and not to</p> <p>21 HMS or HCRE, would you have any reason to disagree with</p> <p>22 her?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: Yeah, I was struggling with</p>
<p style="text-align: right;">98</p> <p>1 counsel about these oral agreements defense, and you</p> <p>2 told me about conversations with Mr. Seery, so I'm</p> <p>3 trying to close that topic.</p> <p>4 Was there anyone else you had any</p> <p>5 conversations with about this alleged oral agreement?</p> <p>6 A. Like I said before, nothing of substance.</p> <p>7 I've probably mentioned it in passing to other</p> <p>8 employees, this is what I understand is being asserted</p> <p>9 in this, but nothing of substance.</p> <p>10 Q. Do you have any personal knowledge as to</p> <p>11 whether Mr. Dondero or Ms. Dondero entered into any</p> <p>12 type of oral agreement prior to the bankruptcy?</p> <p>13 A. No, not other than what's been pled, or</p> <p>14 whatever the terminology is.</p> <p>15 Q. I want to talk a little bit about, you</p> <p>16 touched on earlier, you gave some testimony about how</p> <p>17 in -- there were certain term loans that had payments</p> <p>18 due in December or on or about December 31, 2020.</p> <p>19 Do you remember talking about that?</p> <p>20 A. Yeah, generally.</p> <p>21 Q. And I don't know if you're specifically</p> <p>22 referring to these loans, but is it also your</p> <p>23 understanding that HCMS and HCRE also had payments that</p> <p>24 were due on December 31, 2020?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">100</p> <p>1 that question. There was a lot to it. If you don't</p> <p>2 mind.</p> <p>3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe</p> <p>4 that will help.</p> <p>5 MR. MORRIS: Why don't you ask him about his</p> <p>6 knowledge, instead of Kristin's. You had her as a</p> <p>7 witness.</p> <p>8 I'll continue to object. I don't know why</p> <p>9 you're asking him about her knowledge.</p> <p>10 MR. AIGEN: Do you want to keep coaching him?</p> <p>11 MR. MORRIS: No, I'm trying to coach you.</p> <p>12 MR. AIGEN: Oh, thanks. That's good.</p> <p>13 Appreciate if you stop coaching your witness.</p> <p>14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that</p> <p>15 the instructions she received in December 2020</p> <p>16 regarding not making any more payments related only to</p> <p>17 the Advisors and not to HMS or HCRE, would you have any</p> <p>18 reason to disagree with her?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: I have no reason to question</p> <p>22 Kristin's testimony. I'm sure she gave truthful</p> <p>23 testimony.</p> <p>24 Q. (BY MR. AIGEN) Are you aware or not of</p> <p>25 whether Ms. Hendrix was told by Mr. Waterhouse not to</p>



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<p style="text-align: right;">101</p> <p>1 make payments from certain entities in December of 2 2020?</p> <p>3 MR. MORRIS: Objection to the form of the 4 question.</p> <p>5 THE WITNESS: Yeah, I'm aware, and I think I 6 spoke to that earlier of the instruction that had come 7 down from Dondero through Frank to Kristin, and I was 8 certainly aware of it.</p> <p>9 And I'm -- and I think I spoke to the fact 10 that, you know, certainly hearing it from a person who, 11 as I said before, wasn't really on the team at that 12 point, it was certainly my understanding that that was a 13 global instruction at the time.</p> <p>14 Q. (BY MR. AIGEN) And I want to get into what 15 was actually said and what you remember, so let me ask 16 you this.</p> <p>17 This instruction that came down started from 18 Jim and went to Frank. Is that your understanding?</p> <p>19 A. That's my understanding.</p> <p>20 Q. You weren't there during that discussion I 21 assume; is that correct?</p> <p>22 A. Correct, I was not.</p> <p>23 Q. And then Frank gave an instruction to 24 Kristin; is that your recollection?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">103</p> <p>1 Q. When you say it was conveyed to you, are you 2 talking about subsequent discussions that you had with 3 Ms. Hendrix and Mr. Waterhouse after they talked to 4 each other?</p> <p>5 A. Yes.</p> <p>6 Q. Sitting here today, can you tell me for sure 7 that one of them told you that this instruction related 8 to all of the entities, as opposed to just the 9 Advisors?</p> <p>10 A. No, I can't say that with certainty, but I 11 think that that was the case. But, again, I can't say 12 with certainty.</p> <p>13 Q. Would you defer to Mr. Waterhouse and 14 Ms. Hendrix over what the specific instructions were?</p> <p>15 MR. MORRIS: Objection to the form of the 16 question.</p> <p>17 THE WITNESS: Like I said, I wasn't part of 18 the conversation, so I would defer to people who 19 received the directions more directly.</p> <p>20 Q. (BY MR. AIGEN) And you're not aware of 21 anything in writing or anything that reflects these 22 instructions on whether to pay or not to pay certain 23 payments in December of 2020?</p> <p>24 A. No, I'm not aware of anything in writing.</p> <p>25 Q. And let's change topics for a second here.</p>
<p style="text-align: right;">102</p> <p>1 question.</p> <p>2 THE WITNESS: Yeah, it's my understanding 3 that Frank informed Kristin of that instruction.</p> <p>4 Q. (BY MR. AIGEN) Were you there when Frank 5 provided this instruction to Kristin?</p> <p>6 A. I don't believe I was.</p> <p>7 Q. Then can I ask, how did you become aware that 8 Frank had given this instruction to Kristin?</p> <p>9 A. Through subsequent conversations with Frank 10 and Kristin. As I said before, I don't recall if it 11 was the three of us or me and Frank or me and Kristin. 12 But subsequent conversations.</p> <p>13 Q. Are we talking about conversations back in 14 2020 or after the bankruptcy?</p> <p>15 MR. MORRIS: Objection to the form of the 16 question.</p> <p>17 THE WITNESS: During 2020, December of 2020.</p> <p>18 Q. (BY MR. AIGEN) Sitting here today, can you 19 say with a hundred percent certainty that the 20 instruction related to all of the entities as opposed 21 to just Advisors?</p> <p>22 A. So as you pointed out, I was not party to the 23 direction, so I have no way of knowing with any sort of 24 specificity what the direction actually was. I just 25 know how it was conveyed to me and how I understood it.</p>	<p style="text-align: right;">104</p> <p>1 I want to throw out a term. Are you familiar 2 with the term "NAV ratio trigger period" as it was used 3 in --</p> <p>4 A. In a very, very general sense, yes.</p> <p>5 Q. And in a general sense what does that term 6 mean to you?</p> <p>7 A. It's a term I recognize from the limited 8 partnership agreement of HCMLP. It's a defined term in 9 that agreement.</p> <p>10 Q. To your knowledge, was the NAV ratio trigger 11 period ever reached or triggered prior to the Highland 12 bankruptcy?</p> <p>13 A. I don't know the definition, so I don't know 14 based on the definition whether it had or hadn't.</p> <p>15 Q. Sitting here today, though, it's not your 16 belief, based on your experience, that it was 17 triggered; is that fair to say?</p> <p>18 MR. MORRIS: Objection to the form of the 19 question.</p> <p>20 THE WITNESS: I don't know the consequence of 21 being in a trigger period, I guess is what -- how I'm 22 trying to answer your question.</p> <p>23 Q. (BY MR. AIGEN) Have you ever had any 24 conversations with Nancy Dondero?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">105</p> <p>1 Q. Generally, how many and what was the 2 reasoning? 3 A. Probably less than five. I think maybe only 4 one or two that I can really remember. 5 Q. At a high level what were those conversations 6 about? 7 A. From my recollection of my conversations with 8 her, they pertained to the DRIP, which is a dividend 9 reinvestment program that I helped. 10 Q. And approximately when were these 11 conversations? 12 A. I don't know. Sometime between 2017 and 13 probably 2019. I couldn't tell you with any 14 specificity. These were very informal. 15 Q. Fair to say that you've never had any 16 conversations with Nancy Dondero about any of the loans 17 at issue in this case? 18 A. No, no, no, I've never had a conversation 19 with her like that. 20 Q. And fair to say that you've never had any 21 conversations with Nancy Dondero about compensation for 22 Jim or any other officers at Highland? 23 A. Correct. 24 MR. AIGEN: Why don't we go off the record 25 for two minutes. I think I'm either done or about</p>	<p style="text-align: right;">107</p> <p>1 Can you just generally explain to me what 2 services Highland Capital Management provided for 3 HCMS and HCRE? 4 A. For HCMS -- I do need to separate these a 5 little bit. For HCMS, really full-service accounting, 6 tax, treasury, cash payments. I said tax. Valuation. 7 Nothing personnel-wise because they didn't have any 8 employees. 9 That's all I can think of right off the top 10 of my head, but I could be missing some. 11 Q. And what about HCRE? How is that different? 12 A. Similar, except different types of assets. 13 So more real estate, so less heavy. 14 Maybe not necessarily differences in terms of 15 the types of services, but services would have, I'd 16 say, more cash activity, more variety of investments, 17 which triggers different types of activities going on 18 at those entities. 19 But similar in terms of tax operations, 20 making payments. HCRE didn't have employees, so no 21 payroll. So these would be the broad areas that I 22 would think about. 23 Q. And you mentioned making payments. Would one 24 of those services that Highland provided for these two 25 entities include making loan payments on the term loans</p>
<p style="text-align: right;">106</p> <p>1 done. 2 (Off the record.) 3 Q. (BY MR. AIGEN) You understand you're still 4 under oath? 5 A. Yes. 6 Q. Are you aware of any loans that Highland has 7 made to any employees or officers that were forgiven in 8 all or in part? 9 A. Yes. 10 Q. Can you tell me who? 11 A. I don't know that this will be a complete 12 list, but there were a few employees in the kind of 13 late aughts, maybe 2010, 2011 frame. 14 Q. Do you know the names? 15 A. One was Jack Yang. Another, I'm not sure if 16 it was forgiven or not, that's why I'm hesitating, but 17 it was Tim Lawler. I think his was forgiven in part or 18 in full, but I'm not a hundred percent certain. 19 Q. And any other individuals that received loans 20 that were forgiven in part that you're aware of? 21 A. Not that I recall, but there could be others. 22 Some of this is very, very old. 23 Q. Changing topics here a little bit, I'm going 24 to combine two entities to try to speed this up. If 25 you need to separate, that's fine.</p>	<p style="text-align: right;">108</p> <p>1 like the term loans at issue in these proceedings? 2 MR. MORRIS: Objection to the form of the 3 question. 4 THE WITNESS: I think I mentioned before, I 5 couldn't remember whether or not Kristin was authorized 6 to make payments with respect to HCRE. I think she 7 probably was, but I don't know that with certainty. 8 But, you know, for services, certainly Kristin 9 and her team would be responsible for making those 10 payments, subject to the proper authorization. 11 Q. (BY MR. AIGEN) And I'm sorry if I asked this 12 before. If it wasn't Kristin for HCRE, do you have an 13 idea who it would have been? 14 A. If not Kristin, it would have been Melissa 15 Schroth. 16 Q. And how were those responsibilities split up? 17 What entities was Melissa Schroth responsible for? 18 A. Generally speaking, Melissa was more 19 responsible for entities that were really, like -- I'm 20 going to use this in the most general sense, like Jim 21 entities, Jim's trusts, Jim personally. 22 And for HCRE it was kind of in the middle. 23 When it started out it kind of was more Jim world and 24 then over time it got more complex. 25 And as entities got more complex over time</p>

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<p style="text-align: right;">109</p> <p>1 they tend to get transitioned from Melissa to corporate 2 accounting. And when they got really complex over to 3 another group of fund accountants. 4 So this is one that was, at its beginning, 5 Melissa was the, called primary accountant. And at 6 some point in time that transitioned to the corporate 7 accounting team. I can't remember when the cash 8 process kind of cut over. 9 Q. Is there a list somewhere saying Melissa is 10 responsible for these, Kristin for the others, or is it 11 just more of a pattern or matter of practice? 12 A. More of a matter of practice. If you're 13 responsible for an entity, you're responsible. If 14 you're not, then you're not. 15 MR. AIGEN: That's all the questions I have. 16 Thank you for your time. 17 THE WITNESS: Thank you. 18 EXAMINATION 19 Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's 20 pick up where Mr. Aigen left off. 21 To the best of your knowledge, did HCMS have 22 a shared services agreement with Highland? 23 A. No, it didn't that I'm aware of. 24 Q. But you described certain services that HCMLP 25 provided to HCMS; is that right?</p>	<p style="text-align: right;">111</p> <p>1 that was due at the end of the year? 2 A. Yes, we continued to track it through our 3 interest schedules and through cash. 4 Q. So in the debtor's books and records is there 5 any evidence that the payments that were made in early 6 2019 were intended to relieve NexPoint's obligation to 7 make the installment payment due at the end of the 8 year? 9 MR. RUKAVINA: Objection. Best evidence. 10 THE WITNESS: No, I don't believe so. 11 Q. (BY MR. MORRIS) Did you have a conversation 12 with anybody at any time in the year 2019 about whether 13 the payments made earlier in the year on behalf of 14 NexPoint would eliminate or suspend its obligation -- 15 withdrawn. 16 Did you have any conversation with anybody -- 17 I think I screwed up the dates. Going to have to start 18 over. 19 Let me ask better questions. 20 You looked with Mr. Rukavina at certain 21 payments that were made in early 2019 with respect to 22 the NexPoint note. 23 Do I have that right? 24 A. Yes. 25 Q. Notwithstanding those payments, did NexPoint</p>
<p style="text-align: right;">110</p> <p>1 A. Yes. 2 Q. Do you know whether HCMFA ever compensated -- 3 do you know whether HCMS ever compensated HCMLP for any 4 of those services that HCMLP provided? 5 A. No, it didn't. 6 Q. You mentioned HCRE. To the best of your 7 knowledge, did HCRE have a shared services agreement 8 with Highland Capital Management, LP? 9 A. No, it didn't. 10 Q. Did HCRE provide the services that -- 11 withdrawn. 12 Did HCMLP provide the services to HCRE that 13 you just described? 14 A. Yes. 15 Q. Did HCRE ever compensate HCMLP for any of the 16 services that HCMLP provided? 17 A. No. 18 Q. Okay. Mr. Rukavina asked you some questions 19 about payments that were made on the NexPoint loan in 20 the first half of 2019. 21 Do you remember that? 22 A. Yes, generally. 23 Q. Okay. Notwithstanding those payments, did 24 your group continue to carry on its books and records 25 NexPoint's obligation to make the installment payment</p>	<p style="text-align: right;">112</p> <p>1 make the installment payment that was due at the end of 2 2019? 3 MR. RUKAVINA: Objection. Calls for a legal 4 conclusion. 5 THE WITNESS: It did make the payment that 6 was due at the end of 2019. 7 Q. (BY MR. MORRIS) And the payment that it made 8 at the end of 2019, was that the annual installment 9 payment that was called for in the note itself? 10 MR. RUKAVINA: Objection. Legal conclusion. 11 THE WITNESS: Yes, it was a payment pursuant 12 to the note. 13 Q. (BY MR. MORRIS) Did anybody ever tell you at 14 any time prior to the commencement of this lawsuit that 15 any prior payment by or on behalf of NexPoint relieved 16 it of any obligation to pay the installment payment due 17 at the end of 2020? 18 A. No. 19 Q. And did in fact -- is it your understanding 20 that Mr. Dondero specifically authorized Highland to 21 effectuate a payment on NexPoint's behalf in mid 22 January 2021? 23 A. I don't have specific knowledge, but I know 24 that to have occurred. 25 Q. Okay. Did anybody ever tell you in 2021 --</p>

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<p style="text-align: right;">113</p> <p>1 withdrawn.</p> <p>2 Did anybody tell you in December 2020 or</p> <p>3 December -- or January 2021 that NexPoint didn't have</p> <p>4 to make the installment payment at year end 2020</p> <p>5 because of some prior prepayment?</p> <p>6 A. No.</p> <p>7 Q. Can you think of any reason -- withdrawn.</p> <p>8 Did you ever hear Mr. Dondero -- withdrawn.</p> <p>9 Did you ever see anything in writing where</p> <p>10 NexPoint ever contended, prior to February 1, 2021,</p> <p>11 that it had no obligation to make the payment due at</p> <p>12 the end of 2020 because of some prepayment issue?</p> <p>13 A. No, not that I remember.</p> <p>14 Q. Can you think of any reason why Mr. Dondero</p> <p>15 would have authorized a payment by NexPoint to HCMLP on</p> <p>16 account of the note in January of 2021 if he actually</p> <p>17 believed at that time that no obligation was due</p> <p>18 because of a prior prepayment?</p> <p>19 MR. RUKAVINA: Objection. Speculation, lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: No.</p> <p>22 Q. (BY MR. MORRIS) Does it make any sense to</p> <p>23 you as an accountant that you would pay a seven-figure</p> <p>24 sum of money that you didn't think was due and owing?</p> <p>25 A. No, that does not make sense to me.</p>	<p style="text-align: right;">115</p> <p>1 Q. And you sent it to the corporate accounting</p> <p>2 email group; is that right?</p> <p>3 A. I did.</p> <p>4 Q. And to the best of your recollection, was</p> <p>5 Mr. Waterhouse included in that email group?</p> <p>6 A. Yes, absolutely.</p> <p>7 Q. And did you instruct the corporate accounting</p> <p>8 team to transfer \$2.4 million from HCMLP to HCMFA on</p> <p>9 May 2, 2019?</p> <p>10 A. Yes, specifically Blair, but yes, for the</p> <p>11 team as well.</p> <p>12 Q. The whole team was aware of this?</p> <p>13 A. The whole team is on the email, and I'm</p> <p>14 sending to Blair, who is the AP person, to please set</p> <p>15 up the payment.</p> <p>16 Q. Is it fair to say that you're being</p> <p>17 completely transparent here by including the entire</p> <p>18 corporate accounting group on this email?</p> <p>19 A. Yes.</p> <p>20 Q. And did you tell the entire corporate</p> <p>21 accounting group that this transaction would be a,</p> <p>22 quote, new interco loan?</p> <p>23 A. Yes, that's what the email says.</p> <p>24 Q. Do you have any reason to believe that</p> <p>25 Mr. Waterhouse didn't get this?</p>
<p style="text-align: right;">114</p> <p>1 Q. Can you get Exhibit 13, please.</p> <p>2 A. Got it.</p> <p>3 Q. You were asked some questions about</p> <p>4 paragraph 3.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does paragraph 3 mention annual installment</p> <p>8 payments at all?</p> <p>9 A. No, I'm not seeing it.</p> <p>10 Q. Does paragraph 3 state in any way that a</p> <p>11 prepayment as described in that paragraph would relieve</p> <p>12 the maker of the obligation to make annual installment</p> <p>13 payments?</p> <p>14 A. No.</p> <p>15 Q. Can you turn to the next page and look at</p> <p>16 paragraph 5.</p> <p>17 Are you familiar with that paragraph at all?</p> <p>18 A. No. I mean, I've seen it before, but this</p> <p>19 is, as I said before, this is a provision that probably</p> <p>20 would have been in most, if not all, of these types of</p> <p>21 notes.</p> <p>22 Q. Can you get Exhibit 3, please. This is your</p> <p>23 email dated May 2, 2019.</p> <p>24 Do I have that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">116</p> <p>1 A. No, he got this.</p> <p>2 Q. And did Mr. Waterhouse tell you at any time</p> <p>3 in the history of the world that this \$2.4 million</p> <p>4 should not have been booked as a loan?</p> <p>5 A. No.</p> <p>6 Q. Did Mr. Dondero tell you at any moment in the</p> <p>7 history of the world that this transaction should not</p> <p>8 have been booked as a loan?</p> <p>9 A. No.</p> <p>10 Q. You mentioned that there was an audit that</p> <p>11 followed shortly thereafter?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the debtor's audited</p> <p>14 financial statements for the period ending 2018?</p> <p>15 A. Yes, generally. Not total recall, but yes.</p> <p>16 Q. Are you aware that this loan was included as</p> <p>17 a subsequent event in the debtor's audited financial</p> <p>18 statements?</p> <p>19 A. Yes.</p> <p>20 MR. RUKAVINA: Objection. Best evidence.</p> <p>21 Q. (BY MR. MORRIS) Did Mr. Dondero or</p> <p>22 Mr. Waterhouse or anybody ever tell you that the debtor</p> <p>23 should not have included this \$2.4 million loan in its</p> <p>24 audited financial statements?</p> <p>25 MR. RUKAVINA: Objection. Best evidence.</p>

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<p style="text-align: right;">117</p> <p>1 THE WITNESS: No.</p> <p>2 Q. (BY MR. MORRIS) Okay. And the next day</p> <p>3 there was another loan; right?</p> <p>4 A. Yes.</p> <p>5 Q. I'm going to show you here a document that's</p> <p>6 been produced.</p> <p>7 MR. RUKAVINA: Would you email it to me and I</p> <p>8 can print it out for the court reporter.</p> <p>9 MR. MORRIS: You want to come over here and</p> <p>10 look --</p> <p>11 MR. RUKAVINA: I know it. I'm just thinking</p> <p>12 that we can append it to the record right now.</p> <p>13 MR. MORRIS: It's eight pages, so it's part</p> <p>14 of a whole production.</p> <p>15 MR. RUKAVINA: But it's just one email?</p> <p>16 MR. MORRIS: Just one email that I'm talking</p> <p>17 about. So we're looking at Bates stamp D-CNL003763.</p> <p>18 And I'll email it to you when we're done here.</p> <p>19 And you're welcome to come over here if you'd like to</p> <p>20 see it.</p> <p>21 Q. (BY MR. MORRIS) Mr. Klos, can you take a</p> <p>22 look at the email that I have on my screen.</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that it's an email from</p> <p>25 Kristin Hendrix to the corporate accounting group on</p>	<p style="text-align: right;">119</p> <p>1 A. No.</p> <p>2 Q. Did anybody in the history of the world ever</p> <p>3 raise a question to you as to whether or not Kristin</p> <p>4 was authorized to paper the loan, as she describes it</p> <p>5 in this particular email?</p> <p>6 A. No.</p> <p>7 Q. Do you know if this \$5 million loan was also</p> <p>8 included in the debtor's audited financial statements?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: Yes. Again, subsequent event.</p> <p>11 Q. (BY MR. MORRIS) Okay. And did anybody in</p> <p>12 the history of the world ever tell you that Highland</p> <p>13 should not have included as a subsequent event in its</p> <p>14 2018 audited financial statement this \$5 million loan?</p> <p>15 A. No.</p> <p>16 MR. RUKAVINA: Objection. Best evidence.</p> <p>17 THE WITNESS: No.</p> <p>18 Q. (BY MR. MORRIS) Do you know if HCMFA had its</p> <p>19 financial statements audited?</p> <p>20 A. It did.</p> <p>21 Q. And are you generally familiar with those</p> <p>22 financial statements?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that these two loans totaling</p> <p>25 \$7.4 million were included in HCMFA's audited financial</p>
<p style="text-align: right;">118</p> <p>1 Friday, May 3?</p> <p>2 A. Yes.</p> <p>3 Q. And were you also included in the corporate</p> <p>4 accounting email string?</p> <p>5 A. Yes.</p> <p>6 Q. Can you read the email out loud, please.</p> <p>7 A. It says, Blair, please set up a wire from</p> <p>8 HCMLP to HCMFA for 5 million as a new loan,</p> <p>9 parentheses, 4.4 million should be coming in from Jim</p> <p>10 soon. Hayley, please add this to your loan tracker. I</p> <p>11 will paper the loan.</p> <p>12 Q. So based on that email, did you understand on</p> <p>13 May 3 that HCMLP was going to loan \$5 million to HCMFA?</p> <p>14 A. Yes, HCMFA.</p> <p>15 Q. And did you understand that Kristin</p> <p>16 specifically told the corporate accounting group that</p> <p>17 she would take responsibility for papering the loan?</p> <p>18 A. Yes, that's what she says.</p> <p>19 Q. Do you recall whether Mr. Waterhouse ever</p> <p>20 objected to any aspect of Kristin's email?</p> <p>21 A. He didn't.</p> <p>22 Q. Do you recall in the history of the world</p> <p>23 whether Mr. Waterhouse ever told you that this</p> <p>24 \$5 million transaction should not have been booked as a</p> <p>25 loan?</p>	<p style="text-align: right;">120</p> <p>1 statements as a subsequent event for the period ended</p> <p>2 December 31, 2018?</p> <p>3 A. Yes.</p> <p>4 MR. RUKAVINA: Objection. Best evidence.</p> <p>5 Q. (BY MR. MORRIS) Did anybody in the history</p> <p>6 of the world ever tell you that HCMFA should not have</p> <p>7 included as a subsequent event the borrowing of the</p> <p>8 money reflected in these loans?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: No, no one said that.</p> <p>11 Q. (BY MR. MORRIS) Do you know if HCMFA</p> <p>12 included these loans as a liability on its balance</p> <p>13 sheet?</p> <p>14 A. It did.</p> <p>15 MR. RUKAVINA: Objection. Move to strike.</p> <p>16 Best evidence.</p> <p>17 Q. (BY MR. MORRIS) Did anyone in the history of</p> <p>18 the world ever tell you that HCMFA should not have</p> <p>19 included these loans as a liability on its balance</p> <p>20 sheet?</p> <p>21 MR. RUKAVINA: Objection. Best evidence.</p> <p>22 THE WITNESS: No.</p> <p>23 Q. (BY MR. MORRIS) Okay. Do you recall that in</p> <p>24 October of 2020 HCMFA and NexPoint made a report to the</p> <p>25 retail board?</p>



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<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And are you aware that that's part of the</p> <p>3 annual review process?</p> <p>4 A. Yes, it's the 15(c) process.</p> <p>5 Q. By the way, as we're talking about these</p> <p>6 issues, did Mr. Waterhouse have -- was he an officer of</p> <p>7 HCMFA in 2019 and 2020?</p> <p>8 A. Yes.</p> <p>9 Q. And what's your understanding as to the</p> <p>10 office he held?</p> <p>11 A. Treasurer, I believe.</p> <p>12 Q. And do you know if Mr. Dondero held an</p> <p>13 officer position with respect to each of the Advisors?</p> <p>14 A. He did.</p> <p>15 Q. What position did he hold?</p> <p>16 A. I don't recall with certainty, but I believe</p> <p>17 president.</p> <p>18 Q. As officers of those two entities, do you</p> <p>19 have any knowledge as to whether they participated in</p> <p>20 the communications with the retail board in the fall of</p> <p>21 2020?</p> <p>22 A. I believe Jim and Frank both did.</p> <p>23 Q. And do you know whether the retail board</p> <p>24 asked the Advisors for a report on all obligations due</p> <p>25 and owing to HCMLP and affiliates?</p>	<p style="text-align: right;">123</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. You referred to a couple of loans that were</p> <p>3 given to individuals earlier.</p> <p>4 Do you remember that?</p> <p>5 A. Yes.</p> <p>6 Q. What's the biggest loan that you can recall</p> <p>7 Highland ever forgiving?</p> <p>8 A. The largest one that I can remember was</p> <p>9 a half-million dollars, 500,000.</p> <p>10 Q. So you have no knowledge of any loan ever</p> <p>11 being forgiven where the principal amount forgiven</p> <p>12 exceeded \$500,000; is that right?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. And when is the last loan that Highland</p> <p>15 forgave in whole or in part to one of its officers or</p> <p>16 employees that you can recall?</p> <p>17 A. I don't know a specific year, but it would</p> <p>18 have been in the 2010, 2011 time frame. Maybe 2012,</p> <p>19 but I suspect '10 or '11.</p> <p>20 Q. So is it fair to say to the best of your</p> <p>21 recollection and knowledge that Highland did not</p> <p>22 forgive a single loan made to an officer or employee</p> <p>23 for at least seven years prior to the petition date?</p> <p>24 A. There's none that I can think of.</p> <p>25 Q. Let's just turn our attention to</p>
<p style="text-align: right;">122</p> <p>1 A. They asked for financials, I believe as of</p> <p>2 6/30 as part of that process.</p> <p>3 Q. And are you aware as to whether or not the</p> <p>4 financials that were provided to the retail board</p> <p>5 included, among other things, the \$7.4 million in notes</p> <p>6 that were -- that we're talking about here?</p> <p>7 A. Yes, those financials would have included</p> <p>8 those amounts as liabilities to HCMLP.</p> <p>9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell</p> <p>10 you or anybody to your knowledge that the Advisors</p> <p>11 should not have told the retail boards that they were</p> <p>12 obligated to pay under those two notes?</p> <p>13 A. No.</p> <p>14 Q. Let's talk about loan forgiveness for a</p> <p>15 moment.</p> <p>16 How long have you been with the company?</p> <p>17 A. March of 2009.</p> <p>18 Q. At any time since you've been employed by</p> <p>19 Highland, has Highland ever forgiven a promissory note</p> <p>20 that it held where the maker was a corporate affiliate?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. Have you ever heard prior -- has anybody ever</p> <p>23 told you that before you joined the company, Highland</p> <p>24 had ever forgiven in whole or in part any note that it</p> <p>25 held where the maker was a corporate affiliate?</p>	<p style="text-align: right;">124</p> <p>1 December 2020.</p> <p>2 Do you recall that you testified at length</p> <p>3 about your understanding of the conversations with</p> <p>4 Mr. Waterhouse and Ms. Hendrix?</p> <p>5 Do you remember that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Are you aware of any instruction ever</p> <p>8 made by Mr. Dondero or Mr. Waterhouse in November or</p> <p>9 December 2020 in order to make the payments that were</p> <p>10 due under the three term notes -- withdrawn.</p> <p>11 There were three term notes that were due --</p> <p>12 withdrawn.</p> <p>13 There are three term notes at issue in this</p> <p>14 case. Do you understand that?</p> <p>15 A. Yeah, that's my understanding.</p> <p>16 Q. And one of them was issued by NexBank; is</p> <p>17 that right?</p> <p>18 A. NexPoint Advisors.</p> <p>19 Q. Thank you for the clarification.</p> <p>20 One was by HCRE?</p> <p>21 A. Correct.</p> <p>22 Q. And one was from HCMS; do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And all three of those notes were executed as</p> <p>25 of May 31, 2017; right?</p>



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<p style="text-align: right;">125</p> <p>1 A. Yeah, that was the effective date on all 2 three. 3 Q. And they all rolled up previously outstanding 4 notes that were due and payable to Highland. 5 Do I have that right? 6 A. Correct. To the best of my recollection. 7 Q. So we'll refer to those notes as the term 8 notes. Is that okay? 9 A. Sure. 10 Q. Do you have any knowledge that Mr. Dondero or 11 Mr. Waterhouse ever instructed HCMLP to make the 12 installment payments that were due at the end of 2020 13 with respect to any of those term notes? 14 A. No, I don't believe they provided that 15 instruction to make those payments. 16 MR. RUKAVINA: Objection. Move to strike. 17 Lacks foundation. 18 MR. MORRIS: I'm asking him if he ever heard. 19 MR. RUKAVINA: But he answered a different 20 question. He answered a different question. 21 Q. (BY MR. MORRIS) Did you ever see anything in 22 writing where either Mr. Dondero or Mr. Waterhouse 23 directed HCMLP to make the annual installment payments 24 that were due at the end of 2020 with respect to any of 25 the term notes?</p>	<p style="text-align: right;">127</p> <p>1 FURTHER EXAMINATION 2 Q. (BY MR. RUKAVINA) Go to Exhibit 16, please, 3 1-6. 4 A. Sure. 5 Q. Sir, this is an email string regarding that 6 Rule 15(c) that you were talking about. I'm just going 7 to ask you about the top email, but you're welcome to 8 read the whole. 9 A. Uh-huh. 10 Q. You're copied on Mr. Waterhouse's email there 11 October 6, 2020; right? 12 A. Yes, I'm on the email. 13 Q. And Mr. Waterhouse writes, the HCMFA note is 14 a demand note. You would have read that; right? 15 A. Yes. 16 Q. Did you ever correct Mr. Waterhouse when he 17 says the HCMFA note, as opposed to notes? 18 A. No, that's not something I would have 19 corrected from Frank. 20 Q. Do you recall right now that you might have, 21 when you read this, realized that he made a mistake? 22 A. It would have been such a de minimus, 23 inconsequential mistake that I don't know that I would 24 have addressed it. 25 Q. What about two sentences over, there was an</p>
<p style="text-align: right;">126</p> <p>1 A. No. 2 Q. Okay. But to the best of your recollection, 3 in the 13-week forecast, those forecasts included the 4 installment payments that were due at the end of the 5 year; is that right? 6 A. They did. 7 Q. Did anybody ever tell you prior to 8 February 1, 2021, that your group had made a mistake by 9 not making the payment -- any of the payments that were 10 due under the term notes at the end of 2020? 11 A. Not that I'm aware of. 12 Q. Did anybody tell you prior to February 1, 13 2021, that the makers of the term notes expected 14 Highland to effectuate the payments that were due at 15 the end of the year without approval by Mr. Waterhouse 16 or Mr. Dondero? 17 A. No. 18 Q. Have you seen any protest in writing prior to 19 the commencement of the litigation by any of the makers 20 of the notes about a failure on the part of HCMLP to 21 perform its duties and make that payment at the end of 22 the year? 23 A. No. 24 MR. MORRIS: I have no further questions. 25 MR. RUKAVINA: I have five minutes.</p>	<p style="text-align: right;">128</p> <p>1 agreement between HCMLP and HCMFA the earliest they 2 could demand is May 2021. 3 Did you ever write to him and say that too 4 was a mistake? 5 A. I didn't write to him. 6 Q. Did you realize back then when you read it 7 that he had made a mistake? 8 A. I'm not certain. 9 Q. Did you -- and I'm not suggesting that you 10 should have. You're a busy man. But did you attach 11 any significance outside of the ordinary to this email 12 exchange? 13 MR. MORRIS: Objection to the form of the 14 question. 15 THE WITNESS: I struggle with how to answer 16 that. I saw that this note was in response to retail 17 15(c) follow-up on the Advisors. 18 At this point my role was different, where I 19 was dealing with really the retail funds primarily. So 20 the fact that I'm even on this email is somewhat 21 incidental. 22 Q. (BY MR. RUKAVINA) But surely on October 6, 23 2020 you knew that there were four HCMFA demand notes, 24 didn't you? 25 A. I'm sure I would have had access to that</p>

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<p style="text-align: right;">129</p> <p>1 information. I'm not sure that I was keeping track of</p> <p>2 how many were outstanding at any given point in time.</p> <p>3 Q. And surely on October 6, 2020 you knew that</p> <p>4 only two of them couldn't be demanded by May of 2021,</p> <p>5 didn't you?</p> <p>6 A. Again, I don't know that I was even really</p> <p>7 thinking about these notes at that time.</p> <p>8 Q. Even though you were preparing weekly cash</p> <p>9 forecasts for Mr. Seery?</p> <p>10 A. I wasn't preparing a weekly cash forecast for</p> <p>11 Mr. Seery.</p> <p>12 Q. Going to Exhibit 13, please. Mr. Morris</p> <p>13 asked you a couple questions about this.</p> <p>14 A. I'm sorry, 13?</p> <p>15 Q. Yes, sir. And again, that paragraph 3 that</p> <p>16 talks about prepayment.</p> <p>17 Can you find anything in here, sir, that says</p> <p>18 that a prepayment does not relieve the maker of any</p> <p>19 regularly scheduled payment?</p> <p>20 A. Sorry, that's a lot to comprehend. If you</p> <p>21 could ask again.</p> <p>22 Q. Is there any provision that you can see here</p> <p>23 that's to the effect that a prepayment will not relieve</p> <p>24 the maker of any regularly scheduled payment?</p> <p>25 A. I don't see that specific provision. I just</p>	<p style="text-align: right;">131</p> <p>1 Q. And Mr. Morris asked you whether you see</p> <p>2 anything in here that says that a prepayment relieves</p> <p>3 an annual installment.</p> <p>4 Do you remember that question?</p> <p>5 MR. MORRIS: Objection. That's not what I</p> <p>6 asked.</p> <p>7 THE WITNESS: I don't remember that question.</p> <p>8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3</p> <p>9 together, what would a prepayment apply to other than</p> <p>10 an annual installment? Do you have a view on that?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Again, I struggle with</p> <p>14 prepayment. But as I read Section 3, it would be</p> <p>15 applied first to unpaid accrued interest and then to</p> <p>16 unpaid principal.</p> <p>17 Q. (BY MR. RUKAVINA) Have you ever in your</p> <p>18 personal life prepaid a promissory note before -- have</p> <p>19 you ever in your personal life prepaid a promissory</p> <p>20 note prior to its maturity?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 Q. (BY MR. RUKAVINA) Sitting here today, with</p> <p>25 your CPA, your MBA and you're a CFO of a large entity,</p>
<p style="text-align: right;">130</p> <p>1 read it for what is on the page.</p> <p>2 Q. Isn't it, sir, in your experience the case</p> <p>3 that a promissory note, if it intended not to relieve</p> <p>4 the borrower of regularly scheduled payments would say</p> <p>5 that a prepayment does not relieve the borrower of</p> <p>6 regularly scheduled payments?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: That's a legal question. I</p> <p>10 can't -- I don't know the answer.</p> <p>11 Q. (BY MR. RUKAVINA) Do you remember seeing</p> <p>12 promissory notes that say something like that?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. You'd be surprised if that's what promissory</p> <p>15 notes say?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you</p> <p>20 about this. I'm trying to burn through this so the man</p> <p>21 can make his plane.</p> <p>22 Section 2.1 talks about 30 equal annual</p> <p>23 payments, annual installments.</p> <p>24 You see that?</p> <p>25 A. Yes, I see that.</p>	<p style="text-align: right;">132</p> <p>1 you don't understand what a prepayment means?</p> <p>2 MR. MORRIS: Objection. Argumentative.</p> <p>3 I direct you not to answer.</p> <p>4 You're going to have ask a different question.</p> <p>5 That's an argumentative question and it's insulting.</p> <p>6 MR. RUKAVINA: What's the privilege on which</p> <p>7 you're directing him not to answer?</p> <p>8 MR. MORRIS: I just said it's argumentative.</p> <p>9 MR. RUKAVINA: I'm trying to let you get to</p> <p>10 your flight.</p> <p>11 MR. MORRIS: Ask a proper question. Don't</p> <p>12 make this about me.</p> <p>13 Q. (BY MR. RUKAVINA) You were going to answer</p> <p>14 my question, sir?</p> <p>15 MR. MORRIS: No, I'm directing him not to</p> <p>16 answer.</p> <p>17 MR. RUKAVINA: Then we'll end this deposition</p> <p>18 with a motion to compel.</p> <p>19 MR. MORRIS: Okay. You do that.</p> <p>20 MR. RUKAVINA: I'm making a motion to compel.</p> <p>21 We'll call the judge as soon as we land in New York</p> <p>22 tomorrow.</p> <p>23 MR. MORRIS: You have to read the whole</p> <p>24 question. You can ask the question without the</p> <p>25 verbiage; right?</p>

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<p style="text-align: right;">133</p> <p>1 <b>MR. RUKAVINA:</b> And I asked you on the basis</p> <p>2 of what privilege are you instructing your --</p> <p>3 <b>MR. MORRIS:</b> Argumentative.</p> <p>4 <b>MR. RUKAVINA:</b> That's not a privilege.</p> <p>5 <b>MR. MORRIS:</b> Sir, you can rephrase your</p> <p>6 question and end this right now by not being insulting</p> <p>7 to my client.</p> <p>8 <b>Q. (BY MR. RUKAVINA)</b> I was not trying to be</p> <p>9 insulting, sir.</p> <p>10 I'm asking you again, you do not, sitting</p> <p>11 here today, have an understanding of what the word</p> <p>12 "prepayment" for a promissory note means?</p> <p>13 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>14 question.</p> <p>15 You can answer that one.</p> <p>16 <b>THE WITNESS:</b> In the context that you're</p> <p>17 asking the question --</p> <p>18 <b>Q. (BY MR. RUKAVINA)</b> No, I'm not asking any</p> <p>19 context. Sitting here today, do you have an</p> <p>20 understanding of what the word "prepayment" means when</p> <p>21 it comes to a borrower/lender relationship?</p> <p>22 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>23 question.</p> <p>24 <b>THE WITNESS:</b> Yes, I have a general</p> <p>25 understanding.</p>	<p style="text-align: right;">135</p> <p>1 <b>payment made prior to the time that it's due?</b></p> <p>2 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>3 question.</p> <p>4 <b>THE WITNESS:</b> Yes, in the most general sense</p> <p>5 a prepayment, the prefix "pre" indicates that it's</p> <p>6 before some other event. So from that standpoint,</p> <p>7 prepayment means it was to some extent paid early.</p> <p>8 <b>MR. RUKAVINA:</b> Thank you.</p> <p>9 Pass the witness.</p> <p>10 <b>MR. MORRIS:</b> No further questions.</p> <p>11 Michael?</p> <p>12 <b>MR. AIGEN:</b> No questions.</p> <p>13 <b>THE REPORTER:</b> Mr. Morris, do you want a copy</p> <p>14 of the transcript?</p> <p>15 <b>MR. MORRIS:</b> I sure do.</p> <p>16 <b>THE REPORTER:</b> Mr. Aigen, do you want a copy</p> <p>17 of the transcript?</p> <p>18 <b>MR. AIGEN:</b> Yes, we would also like a copy.</p> <p>19 <b>MR. MORRIS:</b> Yeah, and I'd like that rush.</p> <p>20 (Whereupon, the deposition adjourned at</p> <p>21 5:14 P.M.)</p> <p>22 --oOo--</p> <p>23 I declare under penalty of perjury that the</p> <p>24 foregoing is true and correct. Subscribed at</p> <p>25 _____, Texas, this ____ day of</p>
<p style="text-align: right;">134</p> <p>1 <b>Q. (BY MR. RUKAVINA)</b> What is your</p> <p>2 understanding?</p> <p>3 <b>A.</b> That -- you can look at the note.</p> <p>4 <b>Q.</b> I'm not asking about the note. We got to go</p> <p>5 step by step.</p> <p>6 What is your general understanding as to what</p> <p>7 a prepayment means?</p> <p>8 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>9 question.</p> <p>10 <b>THE WITNESS:</b> It depends on the context and</p> <p>11 it's going to depend on what the note says about</p> <p>12 prepayments. So I have a hard time answering that</p> <p>13 question.</p> <p>14 <b>Q. (BY MR. RUKAVINA)</b> So you would agree with me</p> <p>15 that you have to look at the note before you can answer</p> <p>16 that question?</p> <p>17 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>18 question.</p> <p>19 <b>THE WITNESS:</b> I would want to look at the</p> <p>20 note before I answer the question, because prepayment</p> <p>21 is a term that can be used as a defined term or in a</p> <p>22 casual sense, and those two can sometimes get confused</p> <p>23 and misconstrued.</p> <p>24 <b>Q. (BY MR. RUKAVINA)</b> Would you agree with me</p> <p>25 that in any and all circumstances a prepayment is a</p>	<p style="text-align: right;">136</p> <p>1 _____, 2021.</p> <p>2</p> <p>3</p> <p>4 _____</p> <p>5 DAVID KLOS</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">137</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, BRANDON D. COMBS, a Certified Shorthand</p> <p>3 Reporter, hereby certify that the witness in the</p> <p>4 foregoing deposition was by me duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth in the</p> <p>6 within-entitled cause;</p> <p>7 That said deposition was taken in shorthand by</p> <p>8 me, a disinterested person, at the time and place</p> <p>9 therein stated, and that the testimony of the said</p> <p>10 witness was thereafter reduced to typewriting, by</p> <p>11 computer, under my direction and supervision;</p> <p>12 That before completion of the deposition,</p> <p>13 review of the transcript was not requested. If</p> <p>14 requested, any changes made by the deponent (and</p> <p>15 provided to the reporter) during the period allowed are</p> <p>16 appended hereto.</p> <p>17 I further certify that I am not of counsel or</p> <p>18 attorney for either or any of the parties to the said</p> <p>19 deposition, nor in any way interested in the event of</p> <p>20 this cause, and that I am not related to any of the</p> <p>21 parties thereto.</p> <p>22 <b>DATED:</b> November 1, 2021</p> <p>23</p> <p>24 _____</p> <p>25 Brandon Combs, Certified Shorthand</p>	
<p style="text-align: right;">138</p> <p>1 State of Texas</p> <p>2 Dickman Davenport, Inc. Cert 312</p> <p>3 4228 North Central Expressway</p> <p>4 Suite 101, Dallas, TX 75206</p> <p>5 (214) 855-5100 (800) 445-9548</p> <p>6 Email: info@dickmandavenport.com</p> <p>7 www.dickmandavenport.com</p> <p>8 My commission expires 1-31-23</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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